



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार 30 सितम्बर, 2016/8 आश्विन, 1938

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Shimla, the 26<sup>th</sup> September, 2016*

**No: Shram (A) 6-3/2016 (Awards).**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Case No:	Title of the Case	Date of Award
1.	54/2008	Sh. Ranjeet Singh Jalta V/S Managing Director, M/S Cross Lands a division of Ranbaxy Laboratories Ltd. Gurgaon-122001 & Anr.	10
2.	35/2013	Sh. Ramesh Kumar V/s The State of Himachal Pradesh through Secretary Forest, Shimla & Ors.	10
3.	26/2016	Sh. Balbir Singh V/S The Executive Engineer, IPH Division No-1, P.O. Nerwa, Tehsil Chopal District Shimla, H.P.	10
4.	75/2014	Sh. Navjeet Singh V/S The Managing Director, M/S ACR Instruments & Valves (P) Ltd. Kamli, Parwanoo District Solan, H.P.	10
5.	32/2016	Shri Sarabjeet Kumar V/S The Managing Director, M/S Theon Pharmaceuticals (P) Ltd. Vill. Birpalasi, Nalagarh District Solan H.P.	10
6.	45/2012	Shri Khem Raj & Anr. V/S M/S Minhas associates (P) Ltd. Parwanoo Tehsil Kasauli District Solan, H.P.	10
7.	30/2016	Shri Nokhi Ram V/S The Executive Engineer, HPPWD Division No.-1, Shimla-3, H.P.	10
8.	29/2015	Shri Inder Singh & Ors. V/s The Factory Manager, M/S Ind Swift Ltd. Parwanoo Tehsil Kasauli District Solan, H.P.	10
9.	64/2015	Shri Inder Singh & Ors. V/S The Factory Manager, M/S Ind Swift Ltd. Parwanoo Tehsil Kasauli District Solan, H.P.	10
10.	38/2016	Shri Surender Kumar V/S The Divisional Forest Officer, Forest Division Shimla.	10
11.	35/2016	Shri Dinesh Kumar V/S The Divisional Forest Officer, Forest Division Shimla.	10
12.	05/2012	Shri Baldev V/S The Managing Director M/S Solan Energy Saving Products (P) Ltd. Chambaghat Tehsil & District Solan, H.P.	10
13.	08/2012	Ms. Jamna V/S The Managing Director M/S Solan Energy Saving Products (P) Ltd. Chambaghat Tehsil & District Solan, H.P.	10
14.	06/2012	Smt. Nirmala Devi V/S The Managing Director M/S Solan Energy Saving Products (P) Ltd. Chambaghat Tehsil & District Solan, H.P.	10

15.	07/2012	Smt. Neera Devi V/S The Managing Director M/S Solan Energy Saving Products (P) Ltd. Chambaghat Tehsil & District Solan, H.P.	10
16.	84/2013	Sh. Bharat Kumar V/S The Managing Director M/S Spray Engineering Devices Ltd. Baddi District. Solan, H.P.	10
17.	03/2008	Sh. Phool Singh & Ors. V/S Akikrit Jal Vikas Parvah Nigam Ltd.	10

By order,  
Sd/-

*Pr. Secretary (Lab. & Emp.).*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).**

Ref. No. 54 of 2008  
Instituted on. 29.9.2008  
Decided on 27.8.2016

Ranjeet Singh Jalta R/o Flat no.1 (9) 1st Floor, Nirmal Niwas, Sanjauli Shimla-6.

*...Petitioner.*

*Vs*

1. Managing Director M/s Cross Lands, a division of Ranbaxy Laboratories Ltd., Plot No.90, Sector-32 Gurgaon 122001.
2. Ranbaxy, through its Sr. Manager (Human Resource) Shri Nitin Kumar Kamat, Andheri (E) Mumbai 40009.

*...Respondents.*

**Reference under Section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri T.C Sharma, Advocate.

For respondents : Shri Sandeep Mahajan, Advocate.

**AWARD**

The following reference has been sent by the appropriate government for adjudication:

**“Whether termination of services of Shri Ranjeet Singh Jalta, House no. 1 (9)1st Floor, Nirmal Niwas, Sanjauli Shimla 171006 w.e.f 17.12.2007 by the Managing Director M/s Cross Lands, a division of Ranbaxy Laboratories Ltd., Plot no.90, Sector-32 Gurgaon 122001 ii) Sr. Manager (Human Resource) M/s Ranbaxy Laboratories Ltd., (Human Resource) Andheri (E) Mumbai 40009 without conducting any enquiry and following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, compensation and seniority Shri Ranjeet Singh Jalta is entitled to?”**

2. In nutshell the case of the petitioner is that the termination order dated 17.12.2007 be declared illegal, wrong and contrary to law as the same had been passed without holding any enquiry against him and even no opportunity of being heard had been afforded. The petitioner should be treated to be remained in service for all intents and purposes even after 17.12.2007 and he be given all benefits of arrears of salary as the termination order falls under unfair labour practice and he be awarded special compensation for harassment and illegal termination.

3. The respondent contested the claim of the petitioner by filing reply wherein various preliminary objections have been taken qua maintainability, mis-joinder of necessary parties, that this Court has no territorial jurisdiction to entertain and decide the statement of claim, suppression of material facts, estoppel and that the petitioner is not a "workman". On merits, it has been asserted that the petitioner was offered appointment as a professional service representative on 1.10.1992 vide letter dated 5.9.1992 and vide letter dated 21.4.1994, he was promoted as field sales officer and as such the pay and allowances in respect of petitioner were re-fixed w.e.f. 1.4.1994. The nature of job which the petitioner was required to carry out for the respondent was mainly and substantially to promote sale of the company's pharma products with the Doctors within the State of Himachal Pradesh and also to achieve the sale targets assigned by the respondents. However, on account of large number of daily call reports submitted along-with expense statement having not matched with the performance of the petitioner, the officials of the respondents became suspicious, hence, had carried out detailed investigation and enquiry as regards the daily call reports and the expenses statement as submitted by the petitioner and on enquiry it revealed that the petitioner had not undertaken out station travel as claimed by him and he had also not visited many places as claimed in daily reports. The bills towards expenses on account of out station visits were found to be forged, fraudulent, manipulated to the benefit of the petitioner and in order to cause substantial loss to the interest of the respondents. Since, the work and conduct of the petitioner turned out to be against the welfare, interests and business promotion of the respondents, hence, he was put to notice regarding deficiencies in the work performance from time to time by the respondent and many communications from the year, 2003 onwards had been sent to the petitioner asking him to mend his short comings but of no avail. The respondent offered fair opportunities to the petitioner to submit his explanation regarding the forged and fabricated bills, hence, he was called to the Head Office at Gurgaon on 1.12.2007 but during the hearing the petitioner could not provide any satisfactory clarification and had chosen not to file any reply. Since, the acts indulged in by the petitioner were grave and serious constituting offence involving moral turpitude and in view of the sensitive nature of duties entrusted to him, the management was justified in losing confidence and as such there was no question of continuing the petitioner in service, hence, his services had been terminated as per the terms and conditions of his appointment letter dated 1.10.1992. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 6.7.2011.

1. Whether the termination of services of the petitioner w.e.f. 17.12.2007 by the respondents is in violation of the provisions of Industrial Disputes Act, 1947?  
...OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?  
...OPP.
3. Whether this Court has no jurisdiction to try and decide this petition? ...OPR.

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4. Whether the petitioner is not a workman? ...*OPR*.
5. Whether the petition is not maintainable? ...*OPR*.
6. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to re-instatement in service with seniority and continuity but without back-wages.
Issue no.3	No.
Issue no.4	No.
Issue no.5.	No.
Relief.	Reference answered in favour of the petitioner and against the respondents per operative part of award.

### **Reasons for findings.**

#### **Issues no.1&4.**

8. Being interlinked and correlated both these issues are taken up and discussed together for the sake of convenience and to avoid repetition.

9. To prove these issues, the petitioner examined three PWs including himself. Petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in claim petition and the rejoinder including that being a worker of the respondent company, he was working as professional service representative at Head Quarter Shimla w.e.f. 1.10.1992 and later on he was promoted as field sales officer w.e.f. 1.4.1994. The work of both the posts was one of workers as defined in the Act and Sales Promotion Employee's Act and the work remains to be that of medical representative one. He served with the respondents for 15 years continuously without giving any chance of complaint that too to the utter satisfaction of all superiors and till 17.12.2007, no show cause notice or enquiry for any misconduct had been conducted against him. His services had been terminated on 17.12.2007 without following the mandatory provisions as no opportunity of being heard was afforded to him before terminating his services. He had never produced any false bills to the respondents. He had never indulged in serious illegal activities and even his performance was never reported to be poor. No show cause notice was issued to him and he was never called to the office of General Manager, Gurgaon. He also tendered in evidence the copy of unemployment certificate Ex. PW-1/B, promotion letter dated 21.4.1994 Ex. PW- 1/C, appointment letter Ex. PW-1/D, ten years' service award Ex. PW-1/E, five years' service award Ex. PW-1/F. The Ex. PW-1/G, Ex. PW-1/H, PW-1/J and Ex. PW-1/K are the copies of mails sent by him to respondents, termination letter dated 17.12.2007 Ex. PW-1/L, travel policy Ex. PW-1/M, field expense reimbursement narration dated 26.5.2005 Ex. PW-1/N, letters

Ex. PW-1/O-1 to Ex. PW-1/O- 5, letters Ex. PW-1/P and Ex. PW-1/Q, reply Ex. PW-1/R and letter dated 22.3.2007 Ex. PW-1/S, letter dated 22.5.2007, letter dated 21.7.2007 Ex. PW-1/T and Ex. PW-1/U. In cross-examination, he admitted that he signed the appointment letter. He further admitted that no appointment letter had been issued by Ranbaxy. He denied that his nature of work was that of managerial/administrative. He admitted that the company used to refund travel allowance. He denied that the company had advised him to do his job correctly after 2003. He denied that he did not use to report to his superiors and that Ex. R-1 to Ex. R-5, are the expenses statements in which the claim of Hotel has been shown. He further denied that the bill mark Z-6 was computer generated forged bill. He expressed his ignorance that hotel bills mark Z-8 to mark Z-11 have been submitted by him. He denied that the aforesaid bills have not been issued by the Hotel. He denied that he did not use to go on tours and by submitting false bills he used to reimburse the same from the company.

10. PW-2 Shri Sunil Sharma also tendered in evidence affidavit Ex. PW-2/A wherein he stated that all the workers who are working as medical representatives fall within the definition of “workman” under the labour laws and the nature of their job does not require any special skill or duty of an officer etc. and he is the General Secretary of Shimla unit of Himachal Pradesh Medical Representatives Union for the last about 5 years. The services of petitioner have been terminated on 17.12.2007 without following the mandatory provisions and he was not afforded any opportunity of being heard by the respondent before his termination. He also tendered in evidence letters dated 29.11.2007 Ex. PW-2/B and Ex. PW-2/C and representation Ex. PW-2/D. In cross- examination, he admitted that the relation between employee and employer is based upon trust. He denied that the petitioner had submitted forged bills to the respondent company and that the services of the petitioner had been terminated by affording full opportunity to him.

11. PW-3 Shri Purshotam Naik deposed that the cross land company had merged with Ranbaxy. He further stated that neither any show cause notice nor any chargesheet was issued to the petitioner for dereliction of his duties. He also stated that the petitioner was working as field sales officer and no employee works under the field sales officer. In cross-examination, he admitted that the petitioner used to submit his expenditure statement with the company which the company used to clear. He further admitted that the bills Ex. RW-3/B to Ex. RW-3/R submitted by the petitioner were found to be forged after verification and thereafter the services of the petitioner were terminated after full & final settlement. He also admitted that he had not produced any verification report in the Court regarding the bills Ex. RW-3/B to Ex. RW-3/R.

12. On the contrary, the respondents examined four RWs. RW-1 Shri Amar Singh, Receptionist Hotel Bhagwati Rampur has stated that as per record there is no entry in the name of Shri R.S Jalta on 14.12.2006 and there was no room no. 207 in their Hotel in the year, 2006. Ex. RW-3/H to Ex. RW-3/L were not issued on their behalf and they appear to be false. In cross-examination, he admitted that he was not working in Bhagwati Hotel during the year, 2006 when the bills Ex. RW-3/H to Ex. RW-3/L were prepared or issued and that he had not seen the original of above bills. He also admitted that he had not produced any certificate that the record had been destroyed legally.

13. RW-2 Shri Rakesh Chauhan, receptionist Hotel River View Rohru has stated that the record pertaining to guests staying in the Hotel for the year, 2006 and 2007 has been destroyed after the assessment by the Income Tax Department. RW-3 Shri Roshan Lal has stated that he had not brought the summoned record as the same has been destroyed as per certificate Ex. RW-3/A. RW-4 Shri Vishal Sood, Manager Hotel Himlok, Dadahu has stated that he has not brought the summoned record as the same has been destroyed as per certificate Ex. RW-4/A.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as professional service representative from 1.10.1992 and thereafter he was promoted as field sales officer w.e.f. 1.4.1994 for promoting the sales of the company within the state of Himachal Pradesh. It is also not in dispute that the petitioner was the permanent employee of the respondents prior to his termination. It is also not in dispute that the services of the petitioner were terminated vide termination letter dated 17.11.2007 Ex. PW-1/L. The stand which has been taken by the respondents in its reply is to the effect that the petitioner was working as field sales officer and as such he does not fall under the category of 'workman' as prescribed in section 2 (s) of the Act. Now, this Court is required to ascertain as to whether the petitioner falls within the category of workman or not as per section 2 (s) of the Act. At this juncture, it would be relevant to re-produce section 2 (s) of the Act, which reads as under:

**“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

15. It is a settled provision of law that in determining as to whether a person is a workman or not, the Court has to principally see the main or substantial work for which he was employed. Neither the designation nor any incidental work done by him will get him out-side the preview of the Act. The Hon'ble Supreme Court in (1994) 5 S.C.C 737, titled as H.R Adyanthaya and others Vs. Sandoz (India) Ltd., and another has held that for an employee to be covered by the definition of workman he must be employed in any industry to do any manual, un-skilled, skilled, technical, operational, clerical or supervisory work. If he falls within these categories, it has then to be seen whether he comes within any of the four excluded categories mentioned in section 2 (s) of the Act. The relevant portion of the aforesaid judgment reads as under:

**24.....Hence, the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions of the definition. We reiterate the said interpretation.”**

16. In the instant case, from the perusal of evidence on record, it has become clear that initially the petitioner was engaged as professional service representative and thereafter w.e.f. 1.4.1994, he was promoted as field sales officer. Therefore, it was for the respondents to prove that

the petitioner was employed in a managerial or administrative/supervisory capacity or by the reason of power vested under him, the functions of the petitioner were mainly of a supervisory/managerial nature. However, no evidence has been produced on record by the respondents that the petitioner was working in the supervisory/managerial capacity and his duty was mainly of supervisory nature. Therefore, in view of the facts and circumstances of the case, it cannot be said that the petitioner was not a 'workman'.

17. The further case of the respondents is that the petitioner had submitted forged and fraudulent bills to his benefit in order to cause substantial loss to the interest of the respondents as such his services had been rightly terminated vide termination letter dated 17.12.2007 Ex. PW-1/L. However, from the perusal of the record, it has become clear that the services of the petitioner had been terminated without holding any domestic enquiry and without issuance of any show cause notice or chargesheet. Now, the question which arises for consideration before this Court as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioner without holding the domestic enquiry and without following the principles of natural justice on the ground of the misconduct. The perusal of termination letter dated 17.12.2007 Ex. PW-1/L shows that the services of the petitioner had been terminated on account of submission of forged and fraudulent bills and he had also been paid one month's salary in lieu of notice period. The relevant extract of the termination letter Ex. PW-1/L is reproduced as under:

**“However, at the later date, on your superiors visit to these outstation and stay, it has been revealed that the bills supported by you for claiming your expenses for above outstation visit are forged and fraudulent to the extent that the room claimed to be occupied by you is actually occupied by the some other guest as per the records of hotel.**

**While, the company would have been justified in taking stem disciplinary action against you on that ground to offer you fair opportunity to represent your side and submit your explanation, you were called to the Head Office at Gurgaon by Mr. Dinesh Jumrani, General Manager, HR on December 1, 2007. During this visit you could not provide any satisfactory clarifications on facts revealed concerning forged bills nor chose to explain constraining situations, if any, forcing you to submit such fraudulent claims, instead, you opted to leave discretion to management to take appropriate action including your dismissal from service.**

The above act of implied acceptance of having submitted forged bills of expenses relating to outstation travel undertaken by you amounts to:

1. Dishonesty in connection with business of the company, in as much as claiming to be worked in the market and met customers on specific dates without actually undertaking any such travel or work.
2. Submitting fraudulent and forged bills, with malafied intention of personal gain.
3. Indulging in to the act of moral turpitude leading to breaking relation formed based on trust.

In view of you indulging in the above grave and serious acts of misconduct, the management have lost confidence in you and it is no more possible to repose any confidence in you, which is the fundamental basis of relation of employer and employee. The management has therefore, decided to terminate you from the service of the company as per the terms and conditions of appointment letter dated October 1, 1992 although you are not entitled for any lesser punishment than of dismissal.”



It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed from service unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is a proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded opportunity of being heard before initiating any action against him by the employer/respondent. In D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221, the Hon'ble Apex Court has held as under:

*“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”*

In a recent judgment of our Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors. the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

- “8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
9. ....
10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
11. ....
12. ....
13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked continuously with the respondents from the year, 1992 till 17.12.2007. Therefore, it was incumbent upon the respondents to have conducted the enquiry against the petitioner prior to his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

18. There can be no dispute about the fact that the respondents are entitled to lead evidence on merits before this Court to prove the misconduct of the petitioner in case his dismissal is found to be in violation of the principles of natural justice. In (2006)-6 S.C.C 325, titled as Amritt Vanaspati Co. Ltd. Vs. Khem Chand and another, it has been held by the Hon'ble Apex Court that even if no enquiry has been held by the employer or the enquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and the employee to adduce evidence before it. Now, the next question which arises for consideration before this Court is as to whether the misconduct has been proved against the petitioner or not. As observed earlier, termination order dated 17.12.2007, was issued by

the respondents company terminating the services of the petitioner on the ground that he had submitted forged and fraudulent bills towards the expenses of his out station visits. To prove the aforesaid misconduct, the respondents examined RW-1 to RW-4. However, from the perusal of their statements, it cannot be said that the bills submitted by the petitioner were forged as no original bills/record had been produced by them. All the RWs have stated that the original bills/record have been destroyed. Neither the respondents nor their authorized representatives have cared to step in to the witness box in order to prove their case for the reasons best known to them. Therefore, an adverse inference has to be drawn against the respondents for not appearing before the Court in order to prove their case. Hence, in the absence of any evidence on record, the respondents have failed to prove the alleged misconduct against the petitioner.

19. Therefore, in view of the fact that neither any domestic enquiry was conducted against the petitioner nor the misconduct has been proved before this Court by the respondents, it can safely be held that the termination of the services of the petitioner w.e.f. 17.12.2007 by the respondents was illegal and unjustified.

20. Admittedly, the petitioner had completed more than 240 days in each calendar year, preceding his termination. Now, it stands proved on record that the services of the petitioner had been terminated without giving any opportunity of being heard to him. As per the termination letter Ex. PW-1/L, the petitioner was paid one month's salary in lieu of notice period by way of cheque 462602 dated 7.12.2007 amounting to ` 4925/-. However, the respondents have failed to comply with the conditions (b) and (c) of section 25-F of the Act before terminating the services of the petitioner. At this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under:

**25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.-**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government ( or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

21. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have not complied the conditions of section 25-F as enumerated in clause (b) & (c), precedent to the retrenchment of petitioner. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'ble Apex Court has held as under:

"34. ....The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further

no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

22. In the present case also no evidence has been produced by the respondents to prove that the petitioner has been paid retrenchment compensation equivalent to the fifteen days’ average pay (for every completed year of continuous service) or any part thereof in excess of six months as per clause (b) of section 25-F. Further, with regard to the provisions of clause (c) of the section 25-F, the respondents have failed to produce any evidence which could go to show that the notice was served in the prescribed manner on the appropriate government. Therefore, it has become clear that the respondents have not complied with the conditions (b) & (c) of the section 25-F, which are mandatory in nature as such the termination of the services of the petitioner by the respondents was illegal and unjustified.

23. Therefore, in view of my forgoing discussion, I have no hesitation in holding that the services of the petitioner have been terminated illegally without conducting of any enquiry and following the provisions of Industrial Disputes Act, 1947. Hence, both these issues are decided in favour of the petitioner and against the respondents.

#### **Issue no.2.**

24. Since, I have held under issues no.1 & 4 above that the termination of services of the petitioner by the respondents without complying with the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon’ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon’ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon’ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial

burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....

27. In the present case, the petitioner has only placed on record self-attested unemployment certificate Ex. PW-1/B that he remained unemployed w.e.f. 17.12.2007 and except for this document no other evidence has been led by the petitioner to prove that he was not gainfully employed. No credence can be attached to self-attested unemployment certificate. The petitioner has failed to discharge his burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

**Issue no. 3.**

28. In support of this issue, neither any arguments have been advanced nor any evidence has been led by the respondents which could go to show that this Court has no jurisdiction to try and decide this petition. Hence, this issue is decided in favour of the petitioner and against the respondents.

**Issue no. 5.**

29. In support of this issue, no evidence has been led by the respondents which could go to show that this petition is not maintainable especially when the same was filed by the petitioner pursuant to reference sent by the appropriate government to this Court for adjudication. Therefore, by holding it to be maintainable, this issue is decided in favour of the petitioner and against the respondents.

**Relief.**

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service forth-with with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 27th day of August, 2016. (Praveen)

**(Sushil Kukreja)**

*Presiding Judge,*

*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL- CUM-LABOUR COURT, SHIMLA.**

Ref no. 35 of 2013.

Instituted on 7.6.2013.

Decided on 11.8.2016.

Ramesh Kumar S/o Shri Puran Chand R/o Village Kiana, Tehsil and District Shimla, HP.

...Petitioner.

*Vs.*

1. The State of Himachal Pradesh through the Secretary Forest with Headquarters at Shimla.
2. The Principal Chief Conservator of Forest Himachal Pradesh Shimla (Tolland) Shimla.
3. The Conservator of Forest (Wild Life) Himachal Pradesh with Head Quarter at Hamirpur.
4. The Dy. Conservator of Forests, Himachal Pradesh (DFO Wild Life) Khalini Shimla-2.
5. The Range Officer, Wild Life, Khalini Shimla-171002. ...Respondents

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Hemant Vaid, Advocate

For respondents : Ms. Reena Chauhan, Dy. DA.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether termination of the services of Shri Ramesh Kumar S/o late Shri Puran Chand Vilalge Klana, Tehsil & District Shimla HP by i) the Conservator of Forests (Wild Life) Himachal Pradesh with headquarter at Hamirpur, HP ii) The Deputy Conservator of Forests Himachal Pradesh (D.F.O Wild Life), Khalini Shimla-2 (HP) w.e.f. 11.2.2000 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. In nutshell, the case of the petitioner is that in the month of Jan., 1995, he had joined as daily wage labourer in a wing of the Forest Department known as Environment Conservation Operation in the wild life Division-4 (hereinafter referred to as ECO) for the work of plantation, check dam, construction of parks etc. and the salary of the petitioner was drawn from the forest department. It is stated that the services of the regular employees as well as daily wages labourers of the ECO were inter transferable with the similar employees of the forest department and several daily wages labourers had been shifted to the wild life from the ECO department in the last several years. It is further stated that on 11.2.2000, the forest department and its ECO wing disengaged the applicant from service and thereafter an OA no. 1538 of 2000 was filed by the petitioner before the Administrative Tribunal wherein a direction was given to treat the same as representation by the State of Himachal Pradesh through the Secretary Forest and others. The petitioner appeared before the Principal Chief Conservator of Forests, who dismissed the matter vide common order no. 619 of 2000 on 7.11.2000. Then the petitioner moved another OA no. 692 of 2001 against the aforesaid order dated 7.11.2000 before the HP Administrative Tribunal, which was disposed of on 10.1.2006 holding that the matter of dispute related to Industrial Disputes Act, 1947 (hereinafter referred as Act) and it has no jurisdiction to entertain the matter. It is further stated that thereafter the petitioner made a demand before the Labour Officer as required under the

Act by issuing a notice but the conciliation proceedings failed and the matter was referred to this Court for adjudication. The juniors to the petitioner namely Man Bahadur, Surya Prakash, Jeet Ram, Duni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram, are still working with the respondents and as such the termination of the services of the petitioner as daily wages labourers is in violation of the provisions of section 25-G of the Act. The petitioner had completed more than 240 days in a year and his termination without serving any show cause notice of one month and without paying retrenchment compensation is in violation of the provisions of section 25-F of the Act. The services of the petitioner have been dispensed with by the Range Officer, who was not the appointing authority of the daily wage workers. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated in service with retrospective effect alongwith all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter referred to as Project) and the respondent department was only executing agency. Due to non-availability of funds, the Project came to a closer and the services of all the daily wagers including petitioner had been automatically disengaged. On merits, it has been averred that the petitioner had been engaged on daily wages basis as per requirement of seasonal work *w.e.f.* 1.4.1994, in the Project. It is denied that the petitioner was engaged in Jan., 1995. It is stated that the Project was a foreign aided project which was being executed by Wild Life Division of Forest Department and as such the workers deployed in this Project were paid wages from the Project funds and not by Forest Department. The regular employees working in the Project were deployed from the forest department for execution of Project work purely on secondment basis and some of daily wagers, who were disengaged were re-engaged as per orders passed by the Administrative Tribunal. It is admitted that the representation of petitioner had been rejected by the Principal Chief Conservator on 7.11.2000. It is admitted that S/Shri Om Prakash and Prem Kumar are juniors to the petitioner. The respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner has reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.7.2010.

1. Whether the termination of the services of the petitioner *w.e.f.* 11.2.2000 is improper and unjustified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether this petition is not maintainable? ...*OPR.*
4. Relief.

6. I have heard the learned Counsel for the petitioner and Ld. DDA for respondents and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
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Issue no.2	Entitled for seniority and continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

### Reasons for findings

#### Issue no. 1

8. Learned Counsel for the petitioner contended the services of the petitioner had been terminated illegally in violation of the provisions of section 25-F of the Act as he had completed more than 240 working days in each calendar year and also in the preceding twelve months before his termination. He further contended that the juniors to the petitioner have been retained by the department in violation of the provisions of section 25-G of the Act.

9. On the other hand, Ld. Dy. DA appearing on behalf of the respondents contended that the services of the petitioner had been engaged in ECO Project which was a foreign aided project and due to non-availability of funds, the Project was closed and as such the services of the petitioner stood automatically disengaged with the closer of the Project. She further contended that the juniors, as named above, had only been re-engaged as per the orders of the Courts.

10. Petitioner Shri Ramesh Kumar appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that he had worked in ECO Project till its closure. He also admitted that he had got the wages for the work done by him with the project. He further admitted that Man Bahadur, Jeet Ram, Surya Prakash and Jai Kishan were working in the department and had also worked with the project. He denied that the work was on seasonal basis and that he had worked with the project from April, 1994. He further denied that he had not approached the department for his re- engagement after the closer of the project in the year, 1999

11. To rebut the case of the petitioner, the respondents examined one Shri Mohar Singh, Range Officer as RW-1, who has stated that the petitioner was engaged on daily wages in the year, 1994 under ECO Development NOARD project which was a foreign aided project being executed by Wild Life wing of forest department. After the closure of the project, the services of the petitioner and other workers came to an end automatically. Some of the daily waged workers who were disengaged on the closer of the project were re-engaged as per the orders of the H.P Administrative Tribunal. The petitioner also filed an OA before the Administrative Tribunal which was treated as representation and the said representation was considered by Principal Chief Conservator of Forests Shimla who ordered that the applicants who were engaged by the department for 5 years will be considered in order of seniority whenever work in wild life division Shimla is available. Shri Bhagat Ram and others were re-engaged as per the orders passed by the Administrative Tribunal. The year wise mandays chart of the petitioner is Ex. RW-1/A, office order dated 7.11.2000 is Ex. RW-1/B and the copy of environment cooperation NOARD project is Ex. RW-1/C. In cross- examination, he denied that the ECO Project is the wing of forest department. He further denied that the regular employees of ECO wing as also of the daily waged workers were inter transferable with the similar employees of the forest department. He admitted that several daily waged workers have been shifted to wild life from ECO project in the last several years. He admitted that several daily waged workers of ECO project were re-engaged by the orders of the Court, some of whom have been regularized. He further admitted that S/Shri Man Bahadur and Surya Prakash, who were daily waged workers in ECO Project have been re- engaged in the forest

department and have been regularized. He also admitted that S/Shri Duni Chand, Jeet Ram, Jai Kishan, Ishwar Dass and Bhagat Ram who were daily waged workers in ECO Project are now working as regular employees in the forest department and were juniors to the petitioner. He admitted that the petitioner had completed 240 days in a calendar year. He further admitted that as per Ex. RW-1/A, the petitioner referred at serial no.4 is the senior most and S/Shri Prem Kumar and Om Prakash, who are juniors to the petitioner, have been regularized by the orders of the Court. He also admitted that no notice was issued to the petitioner prior to his termination.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the services of the petitioner had been engaged as daily wage labourer by the respondents department in the ECO Project and after the closer of the same (Project), his services stood terminated. It is also the admitted case of the parties that neither any notice was served upon the petitioner before his termination nor compensation in lieu of notice as prescribed under section 25-F of the Act, has been paid to him. The perusal of year wise mandays chart Ex. RW-1/A, goes to show that the petitioner had worked with the respondent for 113 days in the year, 1994, 289 days in the year 1995, 316 days in 1996, 340 days in 1997, 357 days in 1998 and 272 days in 1999. The mandays chart of petitioner also shows that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. Now, the question which arises for consideration before this Court is as to whether on the closer of the Project, the notice under section 25-F of the Act was required to be given to the petitioner by the respondent or not. This question has been answered by the Hon'ble Supreme Court in 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka, wherein it has been held as under:

***“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.***

13. Therefore, having regard to the law laid down by the Hon'ble Supreme Court and keeping in view the facts and circumstances of the present case, since the petitioner had completed 240 working days in the twelve calendar months preceding his termination, it was incumbent upon the respondents to issue notice to the petitioner and to comply with the provisions of section 25F of the Act, even, if the Project was to be closed, on its completion. At this stage, I would also like to point out that the respondents have failed to lead any such evidence which could go to show that at the time of engagement of the petitioner, it had been brought to his notice that his services were being engaged in a Project which was to last only for a particular length of time. In the absence of such proof/evidence, I have no hesitation in holding that the services of the petitioner had been terminated in contravention of the provisions of section 25-F of the Act. Since, the respondents have failed to comply with the provisions of section 25-F of the Act, his termination is illegal and unjustified.

14. Now, advertent to the other aspect of the case, the petitioner in his affidavit Ex. PA has averred that many persons junior to him are still working in the forest department in violation of the provisions of section 25-G of the Act. In cross-examination, RW-1, Shri Mohar Singh, Range Officer admitted that several daily waged workers have been shifted to wild life from ECO Project in the last several years. He also admitted that several daily waged workers of ECO Project were re-engaged by the orders of the Court, some of whom have been regularized. He also admitted that S/Shri Man Bahadur and Surya Prakash who have been daily waged workers in ECO Project, have been regularized in the forest department and have been regularized. He admitted that S/Shri Jeet Ram, Dhuni Chand, Jai Kishan, Ishwar Dass and Bhagat Ram who were daily waged workers in ECO Project are now working as regular employees in the forest department and they are juniors to



the petitioner. He also admitted that as per Ex. RW-1/A, the petitioner referred at serial no.4 is the senior most and S/Shri Prem Kumar and Om Prakash who are juniors to the petitioner have been regularized by the orders of the Court. In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:

***“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.***

15. In the instant case, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondent department and their services have been regularized whereas the services of petitioner were terminated which is clear cut violation of the provisions of section 25-G of the Act

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the respondents have violated the provisions of section 25-F and 25-G of the Act as such the termination of services of the petitioner by the respondent w.e.f. 11.2.2000 without complying with the provisions of the Act is improper and unjustified. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondents.

#### **Issue no.2.**

17. Since, I have held under issue no.1, above that the termination of the services of the petitioner by the respondents without complying with the provisions of the Act, is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that “once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement”. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that “full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

19. In the present case, the petitioner only prayed for his reinstatement with back- wages in his statement of claim and in his statement as PW-1. There is no cogent evidence led by the petitioner that he was not gainfully employed after his termination. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

**“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The**

**initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”**

20. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 11.2.2000. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

**Issue no.3.**

21. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that the petitioner be reinstated in service forth-with w.e.f. 11.2.2000, with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 11th day of August, 2016.

**(Sushil Kukreja)**

*Presiding Judge,*

*Industrial Tribunal-cum- Labour Court, Shimla.*

16.8.2016.

Present : None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 29.4.2016 on which date Shri Jagdish Rajta, Dy. DA appeared for respondent but none appeared for petitioner and thereafter again the notices have been issued twice for the service of the petitioner but despite that notices have not been received back either served or un-served. Moreover, the appropriate government has also sent a copy of the reference to the petitioner on the address provided by him during conciliation proceedings which means that he is having the knowledge about the pendency of the reference before this Court but despite that he has failed to appear before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested

to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Balbir Singh S/o Shri Rann Singh R/o VPO Vizmal, Tehsil Chopal, District Shimla, HP during October, 1989 by the Executive Engineer, IPH Division Chopal District Shimla who had worked as beldar on daily wages only for 158 days during 1989 and has raised his industrial dispute after about 25 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 158 days and delay of about 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference is the clear that the petitioner has alleged his termination during the year, 1989 to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had only worked for 158 days during the year, 1989 and raised the present dispute after about 25 years which seems that the petitioner is not serious about the present dispute. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during the year, 1989. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

16.8.2016.

**(SushilKukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

17.8.2016.

Present : Petitioner with Shri J.C Bhardwaj, AR.

Shri Rahul Mahajan, Advocate with Shri Sudershan Kiswatkar, General Manager for respondent.

At this stage, it has been stated by Shri Sudershan Kiswatkar, General Manager for respondent company that the respondent is ready and willing to pay a sum of ₹ 75,000/- ( Seventy Five Thousand only) towards full & final settlement of the claim made by the petitioner vide reference no. 75 of 2014 and the aforesaid amount shall be paid to the petitioner through cheque within a period of 20 days from today. He further stated that the EPF form pertaining to the petitioner shall be forwarded by the respondent to EPFO within a period of 15 days and as such the reference be decided accordingly. To this effect his statement recorded separately.

As per separate statement, the petitioner is ready and willing to accept a sum of ₹ 75,000/- (₹ Seventy Five Thousand only) towards full & final settlement of his claim vide reference no. 75 of 2014 and further stated that the reference be decided accordingly.

From the perusal of the statements of both the parties, it is clear that the petitioner has settled the dispute with the respondent and accepted ₹ 75,000/- from the respondent towards full & final settlement of his claim petition. Since, the matter has been settled between the parties amicably, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statements of the parties which shall form part of this award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
17.8.2016.

(SushilKukreja)  
Presiding Judge,  
Labour Court, Shimla.

5.8.2016.

Present : None for the petitioner.  
Shri Ajay Kumar, HR (Executive) for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of respondent. The record reveals that on the previous date of hearing i.e. on 1.7.2016 Shri Gaurav Sharma, Advocate has appeared for petitioner but today none appeared on behalf of the petitioner despite having the knowledge about the present proceedings. Neither the petitioner nor his counsel appeared before this Court today and filed statement of claim which clearly shows that the petitioner is not interested to pursue his claim arising out of the reference as such to further adjourn the case would be a futile exercise. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether termination of services of Shri Sarabjeet Kumar S/o Shri Roshan Lal VPO Nagihar, Tehsil Jhanduta, District Bilaspur, HP C/o Shri Satishender Nath Bhanote, Model Town Kripalpur, P.O & Tehsil Nalagarh, District Solan, HP without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified ? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has alleged his termination to be illegal and unjustified but despite having been served, he has failed to appear before this Court. Such act on the part of the petitioner clearly shows that he is not serious in pursuing his case. Therefore for what has been stated hereinabove, and in view of the fact that the petitioner has failed to file statement of claim and to lead any evidence, it cannot be held that the services of the petitioner have been illegally terminated by the respondent. Hence, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
5.8.2016.

(Sushil Kukreja),  
Presiding Judge,  
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).**

App. No. 45 of 2012.  
Instituted on. 1.10.2012.  
Decided on 4.8.2016.

1. Khem Raj S/o Shri Prem Singh R/o Nabhi Devi, Tehsil Sarkaghat, District Mandi, HP.
2. Narender Kumar S/o Shri Kishan Singh R/o Village Shahtali, Tehsil Jhanduta, District Bilaspur, HP.

Presently both C/o Om Dutt Sharma VPO Taksal, Tehsil Kasauli, District Solan, HP  
...*Petitioners.*

*Vs.*

Proprietor/Factory Manager M/s Minhas Associates Pvt. Ltd., Plot no. 25, Sector-1,  
Parwanoo, Tehsil Kasauli, District Solan, HP. ...*Respondent.*

**Claim petition on behalf of the petitioners under the Industrial Disputes Act**

For petitioners : Shri Niranjana Verma, Advocate.

For respondent : Smt. Ranjana Parmar, Sr. Advocate.

**ORDER/AWARD**

In nutshell the case of the petitioners is that they were working since July, 2002 as driver and conductor in a bus owned by respondent establishment which runs from Parwanoo to Sarkaghat and they were getting the monthly salary of ₹ 10,000/- each including daily expenditure as such they come under the definition of “workman”. The services of petitioner no.1 Shri Khem Raj were terminated on 17th September, 2011 whereas the services of petitioner no.2 Shri Narinder Kumar were terminated w.e.f. March, 2011. The services of both the petitioners had been terminated without issuing any notice, chargesheet and that without conducting any enquiry and that too without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as both the petitioners have completed 240 days in each calendar year. It is further stated that the bonus, salary, gratuity earned leave and other benefits under the labour laws for which they were entitled had not been paid to the petitioners by the respondent and even on the demand notice dated 21.11.2011, raised by the petitioners nothing had come out, hence, the present application has been filed. Against this back-ground the petitioners have prayed that they be reinstated in service with all the consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and that the petition is bad for non-joinder and misjoinder of necessary parties. On merits, it has been asserted that the petitioners were never employed by the respondent and since they were not the employee of the respondent, hence, question of paying them monthly salary and completion of 240 days does not arise and even the petitioners do not fall within the definition of workman. It is further asserted that the petitioners were only being called as and when the regular driver and conductor were on leave, hence, the provisions of the Act are not attracted in this case and even due to negligence on the part of the

petitioners, the respondent has suffered huge loss. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 15.6.2013.

7. Whether the services of applicant no.1 had been terminated on 17.9.2012 in an illegal and unjustified manner as alleged? ...*OPA-1*.
8. Whether the services of applicant no.2 had been terminated w.e.f. March, 2011 in an illegal and unjustified manner as alleged? ...*OPA-2*.
9. If issues no.1 and 2 are proved in affirmative to what service benefits the applicant no.1 and applicant no.2 are entitled to? ...*OPAs*.
10. Whether this petition is not maintainable? ...*OPR*.
11. Whether this petition is bad for non-joinder and misjoinder of parties? ...*OPR*.
12. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	No.
Issue no.3	Becomes redundant.
Issue no.4	No.
Issue no.5	No.
Relief.	Petition dismissed per operative part of order/award.

### **Reasons for findings**

#### **Issues no.1 &2**

7. Being interlinked and correlated both these issues are taken up and discussed together for decision.

8. Learned Counsel for the petitioners contended that the services of the petitioners were illegally terminated by the respondent without complying with the provisions of the Act as neither any notice was issued nor any compensation was paid by the respondent before terminating their services despite the fact that they have completed more than 240 working days in each calendar year.

9. On the other hand, Ld. Counsel for the respondent contended that the respondent used to engage the services of the petitioners as and when the regular driver and conductor used to proceed on leave and the petitioners were not the regular employees of the respondent, hence, the provisions of Act does not apply to the facts of the present case.

10. To prove his case, the petitioner no.1 stepped into the witness box as PW-1 to depose that he was appointed as driver in July, 2002 by the respondent and he used to drive bus which runs from Parwanoo to Sarkaghat. His monthly salary was ₹ 10,000/- per month and his services had been terminated *w.e.f.* 17th September, 2011 without issuing any notice and conducting any enquiry. He had completed 240 days in each calendar year and after his retrenchment he submitted a demand notice dated 21.11.2011, Ex. PW-1/A to the respondent management, copy of which was also sent to Conciliation Office vide postal receipt Ex. PW-1/B who convened so many conciliation meetings but no fruitful result came as the respondent did not turn up in the conciliation meetings. Ex. PW-1/C is the notice of the conciliation officer. He was not paid any compensation, earned leave, bonus, gratuity and night charges. His services had been terminated without complying with the provisions of the Act and other labour laws. He prayed for his reinstatement along-with all the consequential service benefits. In cross-examination, he admitted that he can neither produce any document nor he had annexed any such document to show that he was working as a driver with the respondent. He also admitted that he had not annexed any driving licence along-with the present case. He further admitted that he had no proof to show that he was getting salary @ ₹ 10,000/- per month. He denied that he had not completed 240 days in each calendar year. He further denied that he was not the regular employee.

11. Petitioner no.2 Shri Narinder Kumar has appeared into the witness box as PW-2 and supported the entire evidence of PW-1 including that he was engaged as conductor in the month of July 2002 and that his services had been terminated *w.e.f.* March, 2011. In cross-examination he admitted that he can neither produce any document nor he had annexed any such document to show that he was working as a conductor with the respondent. He further admitted that he had no proof to show that he was getting salary @ ₹ 10,000/- per month. He denied that he had not completed 240 days in each calendar year. He further denied that he was not regular employee.

12. Shri Niranjana Verma, learned counsel for petitioners tendered in evidence the copy of Judgment dated 31.8.2011 passed by the Ld. JMIC, Court no.1, Nalagarh, Ex. P-1 and the copy of judgment dated 12.4.2014 passed by Ld. JMIC Court no.3 Ghumarwin, Ex. P-2.

13. On the contrary, the respondent examined one Shri Ashwani Minhas, who stated that vide Ex. RW-1/A he has been authorized by the respondent to depose on behalf of the company. The petitioners S/Shri Khem Raj and Narinder Kumar were not their regular employees and they had never been working since 2002 and no salary to the tune of ₹ 10000/- had been paid to them. They used to come for work at the request of the management for 1 or 2 days in a year or when there was scarcity of any worker. Their services were never terminated by the company as they (petitioners) were not the regular employees of the company and even they have not completed 240 days in any year, hence, they are not entitled for EPF, gratuity, bonus, leave encashment etc. The vehicles bearing no. HP 15-2125, HP 15-1825 and HP 15-1725 were owned by the firm and vehicle on. HP 15-2225 was never owned by the respondent firm. In cross-examination, he stated that the respondent was running two buses from Parwanoo to Sarkaghat. He denied that the petitioner no.1 Shri Khem Raj was driver and petitioner no.2 Narinder Kumar was conductor in their buses. He denied that they were paid monthly salary of ₹ 10000/- and that the services of Khem Raj were terminated on 17.9.2011 and the services of Narinder Kumar were terminated *w.e.f.* March, 2011. He further denied that the petitioners have completed 240 days in each calendar year and that they had worked continuously with the respondent from July, 2002 till 2011.

14. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record. The petitioners have tried to establish on record that they were working as driver and conductor in a bus owned by the respondent establishment since July, 2002 and the services of petitioner no.1 Khem Raj were terminated on 17.9.2011 whereas the services of petitioner no.2 were terminated w.e.f. March, 2011. However, the case of the respondent is that the services of the petitioners were used to be engaged as and when the regular driver and conductor had to proceed on leave and as such they were not their regular employees. No doubt, both the petitioners have stated in their evidence that they have completed 240 days in each calendar year but when, regard is given to the entire evidence led by the petitioners, there is nothing on record which could show that they have completed 240 working days in each calendar year and in twelve calendar months preceding their termination. It is a settled law that the burden lies on the workman to prove that he had completed 240 days in preceding one year. In 2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others, the Hon'ble Supreme Court has held as under:

***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

15. In AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the Hon'ble Supreme Court has held that:-

***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioners have failed to prove on record that they had put in 240 days in each calendar year and in twelve calendar months preceding their termination. Therefore, as they had not completed 240 working days in any calendar year and preceding twelve months as such no protection of section 25-F can be granted to the petitioners.

16. The further case of the petitioners is that they have been engaged by the respondent on regular basis as from the date of their engagement, they were continuously working with the respondent. But they have failed to lead any evidence in this respect. The learned counsel for the petitioners tried to establish on record from the copies of judgment 31.8.2011 Ex. P-1 and judgment dated 12.4.2014 Ex. P-2 that the petitioner no.1 Khem Raj had worked as driver with the respondent continuously. From the perusal of the judgment Ex. P-1, it is clear that a criminal case was registered against the petitioner no.1 for his having committed offences punishable under sections 279 and 304-A of IPC with respect to the bus bearing registration no. HP 15-2125 owned by the respondent vide FIR no. 59/2006 dated 9.4.2006. Similarly, vide judgment Ex. P-2, a criminal case was registered against petitioner no.1 Khem Raj for his having committed offences punishable under sections 279, 337 and 338 of IPC vide FIR no. 130/2007 dated 9.9.2007. However, from the perusal of the aforesaid judgments, it cannot be said that petitioner Khem Raj



was in continuous employment with the respondent as from these judgments it can only be inferred that he was driving the bus owned by the respondent on 9.4.2006 and 9.9.2007.

17. In (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr., the Hon'ble Supreme Court has held that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis had no right to the post. The relevant portion of the aforesaid judgment reads as under:

“22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary.....”

In the present case, it was for the petitioners to bring on record the cogent and satisfactory evidence about their regular appointment with the respondent. The petitioners have not adduced in evidence any such appointment letter or any document to warrant such inference there by making it evident that they were the regular employees of respondent. In cross-examination both the petitioners admitted that they can neither produce any document nor they had annexed any such document to show that they were working as driver and conductor with the respondent. They have also admitted that they have no proof to show that they were getting the salary @ ₹ 10,000/- per month. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioners were not the regular employees of respondent and their services were engaged on day to day basis as and when the regular driver and conductor were on leave as such they have no right to any regular post.

18. The learned counsel for the petitioner next contended that the petitioners are entitled to bonus, gratuity, earned leave encashment etc. However, in view of my aforesaid discussion that the petitioners were not the regular employees of the respondent and they were only engaged as and when the regular driver and conductor were on leave, therefore, they are not entitled to any bonus, gratuity, encashment of earned leave etc.

19. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioners by the respondent without complying with the provisions of the Act is not illegal and unjustified. Accordingly, both these issues are decided in favour of the respondent and against the petitioners.

### **Issue No. 3**

20. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

### **Issue no.4 & 5.**

21. Being interlinked and correlated both these issues are taken up and discussed together for decision. The respondent has failed to lead any satisfactory and cogent evidence on record which could show that the petition is not maintainable and the same is bad for non-joinder and mis-joinder of necessary parties. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petition is not maintainable and the same is bad for non-joinder and mis-joinder of necessary parties. Accordingly, both these issues are decided in favour of the petitioners and against the respondent.

**Relief.**

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioners fails and is hereby dismissed. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 4th day of August, 2016. (Praveen)

(Sushil Kukreja),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.

1.8.2016.

Present : None for the petitioner.

Ms. Reena Chauhan Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim but neither the petitioner nor any person authorized by him has appeared before this Court in order to file claim. The record reveals that after receiving the reference from the appropriate government, the notices were issued to the parties to appear before this Court on 4.5.2016 on which date the petitioner appeared in person and the case was adjourned for filing of claim on 10.6.2016. On 10.6.2016, Shri Rahul Gautam, Advocate appeared for petitioner and prayed for time to file the claim, hence, on his request the case was adjourned for filing of claim on 12.7.2016 on which date again at the request of learned vice counsel for the petitioner the case was adjourned for filing of claim for today i.e. 1.8.2016 on which date none appeared for petitioner. The petitioner has failed to appear before this Court and to file statement of claim despite having been afforded repeated opportunities which clearly shows that he is not interested to pursue his claim arising out of the reference and as such to further adjourn the case would be a futile exercise. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Nokhi Ram S/o Shri Ghumru (Thmru) R/o Village Kotli, P.O Gumma Tehsil & District Shimla HP during August, 1998 by the Executive Engineer, HPPWD Division no.1 Shimla-2, who had worked as beldar on daily wages only for 59 days and 193 days in 1997 & 1998 respectively and has raised his industrial dispute after about 15 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 59 and 193 days in 1997 and 1998 respectively and delay of 15 years in raising the industrial dispute what amount of back wages, seniority past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has raised the dispute after 15 years and has alleged his termination to be illegal and unjustified but despite repeated opportunities to file the claim, he has failed to appear before this Court. Such act on the part of the petitioner clearly shows that he is not serious in pursuing his case. Therefore for what has been stated hereinabove, and in view of the fact that the petitioner has failed to file statement of claim

and to lead any evidence, it cannot be held that the services of the petitioner have been illegally terminated by the respondent. Hence, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
11.8.2016.

(Sushil Kukreja),  
*Presiding Judge,*  
*Labour Court, Shimla.*

3.8.2016.

Present : None for the petitioner.

Shri Upender Sharma, Advocate for respondent.

Case called repeatedly but none appeared on behalf of petitioners. For today, the case has been listed for the service of the petitioners. The record reveals that the notices issued for the service of the petitioners on the given address of reference itself, have not been received back either served or un-served. The record further reveals that the reference has been received in this Court on 22.6.2015 from the appropriate government and thereafter the notices were issued to the parties to appear before this Court on 31.7.2015 on which date Ms. Anjana Sharma, Advocate appeared for respondent but none appeared for petitioners and there after the notices have been issued ten times for the service of the petitioners but despite that petitioners have failed to appear and as such to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioners are not interested to pursue their claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether transfer of 79 workers/employees out of 91 employed by M/s Ind Swift Ltd (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K) without passing any order of closure as defined in section 2(cc) of the Industrial Disputes Act, 1947(2-(cc) “ closure” means the permanent closing down of a place of employment or part thereof” is legal and justified? If not, what monetary & other benefits the affected workers/employees are entitled to from the above employer/management as well as to what other legal action is attracted by this act of employer/ Management?”**

**“Whether consequent upon transfer of workers from M/s Ind Swift Ltd (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K), raising of miscellaneous demand notice dated 14.3.2014 (copy enclosed) by the concerned workers, is legal and justified? If yes, what monetary & other benefits the concerned workmen are entitled to from the above employer/management?”**

From the aforesaid reference is the clear that the petitioners have alleged their transfer to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioners. It is pertinent to mention here that the Labour Commissioner has also informed the petitioners about the present reference by sending a copy of this reference to them on the address provided by them during conciliation proceedings. So, petitioners were having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, they could have themselves appeared before this Court in order to file their claim. However, they have failed to appear despite issuance of several notices. Therefore, in the absence of any material on record, it cannot be said that the transfer 79 workers is illegal and unjustified and demands raised by them vide demand notice dated 14.3.2014 are legal and justified. Hence, the reference is answered against the petitioners and the award is passed accordingly. However, liberty is granted to the petitioners to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

3.8.2016.

**(Sushil Kukreja),**  
Presiding Judge,  
Labour Court, Shimla.

3.8.2016.

Present : None for the petitioner.

Shri Upender Sharma, Advocate for respondent.

Case called repeatedly but none appeared on behalf of petitioners. For today, the case has been listed for the service of the petitioners. The record reveals that the notices issued for the service of the petitioners on the given address of reference itself, have not been received back either served or un-served. The record further reveals that the reference has been received in this Court on 22.6.2015 from the appropriate government and thereafter the notices were issued to the parties to appear before this Court on 31.7.2015 on which date Ms. Anjana Sharma, Advocate appeared for respondent but none appeared for petitioners and thereafter the notices have been issued nine times for the service of the petitioners but despite that petitioners have failed to appear and as such to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioners are not interested to pursue their claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether transfer of 84 workers/employees out of 119 employed by M/s Ind Swift Ltd. (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K) without passing any order of closure as defined in section 2(cc) of the Industrial Disputes Act, 1947 (2-(cc) “closure” means the permanent closing down of a place of employment or part thereof” is legal and justified? If not, what monetary & other benefits the affected workers/employees are entitled to from the above employer/management as well as to what other legal action is attracted by this act of employer/Management?”**

**“Whether consequent upon transfer of workers from M/s Ind Swift Ltd (Formulation Division) Plot no.23 and 17B (Unit-11), Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K), raising of miscellaneous demand notice dated 14.3.2014 (copy enclosed) by the concerned workers, is legal and justified? If yes, what monetary & other benefits the concerned workmen are entitled to from the above employer/management?”**

From the aforesaid reference is the clear that the petitioners have alleged their transfer to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioners. It is pertinent to mention here that the Labour Commissioner has also informed the petitioners about the present reference by sending a copy of this reference to them on the address provided by them during conciliation proceedings. So, petitioners were having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, they could have themselves appeared before this Court in order to file their claim. However, they have failed to appear despite issuance of several notices. Therefore, in the absence of any material on record, it cannot be said that the transfer of 84 workers/employees out of 119 employed by the respondent is illegal and unjustified and the demands raised by them in demand notice dated 14.3.2014 are legal and justified. Hence, the reference is answered against the petitioners and the award is passed accordingly. However, liberty is granted to the petitioners to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

3.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

3.8.2016.

Present : None for the petitioner.

Shri Upender Sharma, Advocate for respondent.

Case called repeatedly but none appeared on behalf of petitioners. For today, the case has been listed for the service of the petitioners. The record reveals that the notices issued for the service of the petitioners on the given address of reference itself, have not been received back either served or un-served. The record further reveals that the reference has been received in this Court on 22.6.2015 from the appropriate government and thereafter the notices were issued to the parties to appear before this Court on 31.7.2015 on which date Ms. Anjana Sharma, Advocate appeared for respondent but none appeared for petitioners and thereafter the notices have been issued ten times for the service of the petitioners but despite that petitioners have failed to appear and as such to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioners are not interested to pursue their claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether transfer of 79 workers/employees out of 91 employed by M/s Ind Swift Ltd (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District**

**Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K) without passing any order of closure as defined in section 2(cc) of the Industrial Disputes Act, 1947(2-(cc) "closure" means the permanent closing down of a place of employment or part thereof" is legal and justified? If not, what monetary & other benefits the affected workers/employees are entitled to from the above employer/management as well as to what other legal action is attracted by this act of employer/Management?"**

**"Whether consequent upon transfer of workers from M/s Ind Swift Ltd (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K), raising of miscellaneous demand notice dated 14.3.2014 (copy enclosed) by the concerned workers, is legal and justified? If yes, what monetary & other benefits the concerned workmen are entitled to from the above employer/management?"**

From the aforesaid reference is the clear that the petitioners have alleged their transfer to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioners. It is pertinent to mention here that the Labour Commissioner has also informed the petitioners about the present reference by sending a copy of this reference to them on the address provided by them during conciliation proceedings. So, petitioners were having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, they could have themselves appeared before this Court in order to file their claim. However, they have failed to appear despite issuance of several notices. Therefore, in the absence of any material on record, it cannot be said that the transfer of 79 workers is illegal and unjustified and demands raised by them vide demand notice dated 14.3.2014 are legal and justified. Hence, the reference is answered against the petitioners and the award is passed accordingly. However, liberty is granted to the petitioners to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

3.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

3.8.2016.

Present : None for the petitioner.

Shri Upender Sharma, Advocate for respondent.

Case called repeatedly but none appeared on behalf of petitioners. For today, the case has been listed for the service of the petitioners. The record reveals that the notices issued for the service of the petitioners on the given address of reference itself, have not been received back either served or un-served. The record further reveals that the reference has been received in this Court on 22.6.2015 from the appropriate government and thereafter the notices were issued to the parties to

appear before this Court on 31.7.2015 on which date Ms. Anjana Sharma, Advocate appeared for respondent but none appeared for petitioners and thereafter the notices have been issued nine times for the service of the petitioners but despite that petitioners have failed to appear and as such to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioners are not interested to pursue their claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether transfer of 84 workers/employees out of 119 employed by M/s Ind Swift Ltd (Formulation Division) Plot no.23, Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K) without passing any order of closure as defined in section 2(cc) of the Industrial Disputes Act, 1947 (2-(cc) “closure” means the permanent closing down of a place of employment or part thereof” is legal and justified? If not, what monetary & other benefits the affected workers/employees are entitled to from the above employer/management as well as to what other legal action is attracted by this act of employer/ Management?”**

**“Whether consequent upon transfer of workers from M/s Ind Swift Ltd (Formulation Division) Plot no.23 and 17B (Unit-11), Sector-2, Parwanoo, Tehsil Kasauli District Solan by its Manager/Employer to other establishment/Factory of Ind-Swif group situated in or around Baddi, District Solan and Samba (in J&K), raising of miscellaneous demand notice dated 14.3.2014 (copy enclosed) by the concerned workers, is legal and justified? If yes, what monetary & other benefits the concerned workmen are entitled to from the above employer/management?”**

From the aforesaid reference is the clear that the petitioners have alleged their transfer to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioners. It is pertinent to mention here that the Labour Commissioner has also informed the petitioners about the present reference by sending a copy of this reference to them on the address provided by them during conciliation proceedings. So, petitioners were having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, they could have themselves appeared before this Court in order to file their claim. However, they have failed to appear despite issuance of several notices. Therefore, in the absence of any material on record, it cannot be said that the transfer of 84 workers/employees out of 119 employed by the respondent is illegal and unjustified and the demands raised by them in demand notice dated 14.3.2014 are legal and justified. Hence, the reference is answered against the petitioners and the award is passed accordingly. However, liberty is granted to the petitioners to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

3.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

4.8.2016.

Present: None for the petitioner.

Ms. Reena Chauhan Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim but neither the petitioner nor any person authorized by him has appeared before this Court in order to file claim. The record reveals that the reference has been received in this Court on 11.4.2016 from the appropriate government and thereafter the notices were issued to the parties to appear before this Court on 25.5.2016 on which date petitioner appeared himself before this Court and thereafter the case was adjourned for filing of claim on 29.6.2016 on which date also the petitioner appeared in person and prayed for time to file claim which was allowed and the case was listed for filing of claim for today *i.e* 4.8.2016. However, the petitioner has failed to appear before this Court today and to file statement of claim which clearly shows that he is not interested to pursue his claim arising out of the reference and as such to further adjourn the case would be a futile exercise. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Surender Kumar S/o Shri Thakur Dass R/o Village Sihpur, P.O Mashobra, Tehsil & District Shimla, HP during February, 1998 by the Divisional Forest Officer, Shimla who had worked as beldar on daily wages only for 12 days in 1998 and has raised his industrial dispute after about 15 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 12 days during 1998 and delay of 15 years in raising the industrial dispute what amount of back wages, seniority past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference is the clear that the petitioner has raised the dispute after 15 years and has alleged his termination to be illegal and unjustified but despite repeated opportunities to file the claim, he has failed to appear before this Court. Such act on the part of the petitioner clearly shows that he is not serious in pursuing his case. Therefore for what has been stated hereinabove, and in view of the fact that the petitioner has failed to file statement of claim and to lead any evidence, it cannot be held that the services of the petitioner have been illegally terminated by the respondent. Hence, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

4.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*



5.8.2016.

Present : None for the petitioner.

Ms. Reena Chauhan Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim but neither the petitioner nor any person authorized by him has appeared before this Court in order to file claim. The record reveals that the reference has been received in this Court on 31.3.2016 from the appropriate government and thereafter the notices were issued to the parties to appear before this Court on 19.5.2016 on which date none appeared for petitioner, hence, fresh notice was ordered to be issued to the petitioner returnable for 4.7.2016 on which date petitioner appeared himself before this Court and the case was adjourned for filing of claim for today i.e. 5.8.2016 on which date none appeared for petitioner. The petitioner has failed to appear before this Court and to file statement of claim which clearly shows that he is not interested to pursue his claim arising out of the reference and as such to further adjourn the case would be a futile exercise. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file

The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Dinesh Kumar S/o Late Shri Het Ram Sharma Village Chhabaldi, P.O Gumma, tehsil and District Shimla HP during the year September, 1993 by the Divisional Forest Officer, Shimla who had worked as beldar on daily wages only for 44 days in 1993 and has raised his industrial dispute after about 20 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 44 days during 1993 and delay of 20 years in raising the industrial dispute what amount of back wages, seniority past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has raised the dispute after 20 years and has alleged his termination to be illegal and unjustified but despite repeated opportunities to file the claim, he has failed to appear before this Court. Such act on the part of the petitioner clearly shows that he is not serious in pursuing his case. Therefore for what has been stated hereinabove, and in view of the fact that the petitioner has failed to file statement of claim and to lead any evidence, it cannot be held that the services of the petitioner have been illegally terminated by the respondent. Hence, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

5.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

6.8.2016.

Present : Petitioner with Shri J.C Bhardwaj, AR.

Shri Pankaj Sharma, Advocate for respondent.

At this stage, it has been stated by the petitioner that he had settled the dispute with the respondent and a sum of ₹ 25,000/- vide cheque no. 082602 dated 6.8.2016 of Corporation Bank Solan had been given to him by the respondent towards full & final settlement of his claim and now he does not have any claim against the respondent and as such the reference be decided accordingly. To this effect his statement recorded separately.

As per separate statement, the learned counsel for respondent admitted the aforesaid statement of petitioner and stated that the case be decided in terms of the aforesaid statement.

From the perusal of the statement of petitioner, it is clear that the petitioner has settled the dispute with the respondent and accepted ₹ 25,000/- from the respondent in full & final settlement of his claim petition. Since, the matter has been settled between the parties amicably, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the parties which shall form part of this award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

6.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla. Camp at Solan.*

6.8.2016.

Present : Petitioner with Shri J.C Bhardwaj, AR.

Shri Pankaj Sharma, Advocate for respondent.

At this stage, it has been stated by the petitioner that she had settled the dispute with the respondent and a sum of ₹ 25,000/- vide cheque no. 082604 dated 6.8.2016 of Corporation Bank Solan had been given to her by the respondent towards full & final settlement of her claim and now she does not have any claim against the respondent and as such the reference be decided accordingly. To this effect her statement recorded separately.

As per separate statement, the learned counsel for respondent admitted the aforesaid statement of petitioner and stated that the case be decided in terms of the aforesaid statement.

From the perusal of the statement of petitioner, it is clear that the petitioner has settled the dispute with the respondent and accepted ₹ 25,000/- from the respondent in full & final settlement of her claim petition. Since, the matter has been settled between the parties amicably, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the parties which shall form part of this award/order. Let a copy of this award/order be

sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
6.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla. Camp at Solan.*

6.8.2016.

Present : Petitioner with Shri J.C Bhardwaj, AR.

Shri Pankaj Sharma, Advocate for respondent.

At this stage, it has been stated by the petitioner that she had settled the dispute with the respondent and a sum of ₹ 25,000/- vide cheque no. 082605 dated 6.8.2016 of Corporation Bank Solan had been given to her by the respondent towards full & final settlement of her claim and now she does not have any claim against the respondent and as such the reference be decided accordingly. To this effect her statement recorded separately.

As per separate statement, the learned counsel for respondent admitted the aforesaid statement of petitioner and stated that the case be decided in terms of the aforesaid statement.

From the perusal of the statement of petitioner, it is clear that the petitioner has settled the dispute with the respondent and accepted ₹ 25,000/- from the respondent in full & final settlement of her claim petition. Since, the matter has been settled between the parties amicably, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the parties which shall form part of this award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
6.8.2016.

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Labour Court, Shimla. Camp at Solan.*

6.8.2016.

Present : Petitioner with Shri J.C Bhardwaj, AR.

Shri Pankaj Sharma, Advocate for respondent.

At this stage, it has been stated by the petitioner that she had settled the dispute with the respondent and a sum of ₹ 25,000/- vide cheque no. 082605 dated 6.8.2016 of Corporation Bank Solan had been given to her by the respondent towards full & final settlement of her claim and now she does not have any claim against the respondent and as such the reference be decided accordingly. To this effect her statement recorded separately.

As per separate statement, the learned counsel for respondent admitted the aforesaid statement of petitioner and stated that the case be decided in terms of the aforesaid statement.

From the perusal of the statement of petitioner, it is clear that the petitioner has settled the dispute with the respondent and accepted ₹ 25,000/- from the respondent in full & final settlement of her claim petition. Since, the matter has been settled between the parties amicably, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the parties which shall form part of this award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
6.8.2016.

(Sushil Kukreja),  
Presiding Judge,  
Labour Court, Shimla. Camp at Solan.

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref. No. 84 of 2013.  
Instituted on. 11.11.2013.  
Decided on 30.8.2016.

Bharat Kumar S/o Shri Ram Japu Prasad C/o Shri Ravi Kant Sharma, House no. 170,  
Basanti Bag, Baddi, Tehsil Nalagarh, District Shimla, HP .....*Petitioner.*

*Vs.*

M/s Spray Engineering Devices Ltd., Unit-III, Tehsil Baddi, District Solan, HP through its  
Managing Director. ....*Respondent.*

**Reference under Section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri Amit Kumar Dhumal, Advocate.

For respondent : Shri Chander Shekhar Sharma, Advocate.

**AWARD**

The following reference has been sent by the appropriate government for adjudication:

**“Whether termination of the services of Shri Bharat Kumar S/ Shri Ram Japu Prasad C/o Shri Ravi Kant Sharma, House no. 170, Basanti Bagh Baddi Tehsil Nalagarh, District Solan, HP during July, 2012 by the employer/Managing Director M/s Spray Engineering Devices Ltd., Unit-III, Tehsil Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. In nutshell the case of the petitioner is that he was engaged as a worker on daily wages by the respondent company on 7.11.1997 and worked as such till 14.7.2012 without any break. The petitioner had completed fifteen years and four months in the respondent company and his services had been terminated vide order dated 9.7.2012, without issuing any show cause notice and without complying the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) despite the fact that the respondent company had issued a sweat equity share in favour of the petitioner for his valuable support and contribution towards the company. It is further stated that on 19.2.2012, the workers of the respondent company called a meeting of workers for their welfare and as per resolution six workers including petitioner have been chosen as members of workers group to prepare the list of their demands. On 25.5.2012, the petitioner along-with other workers of the respondent company had submitted a representation/letter regarding the demands of Arial, Safety Shoes, Dress, Canteen facility, Bonus, Tea Facility, joining letter etc., to the respondent company due to which the services of the petitioner have been terminated on 9.7.2012. After his termination, the petitioner visited the respondent company for his re-engagement but his request was refused by the respondent. Thereafter, the petitioner raised demand notice on 16.7.2012 and the Labour-cum-Conciliation Officer had tried to settle the dispute but of no avail. Against this backdrop the petitioner has prayed that the termination order dated 9.7.2012 be quashed and set aside and the respondent company be directed to re-engage him with full back-wages, seniority including other consequential benefits.

3. The respondent contested the claim of the petitioner by filing reply wherein preliminary objections have been taken qua maintainability, that the petitioner is not coming with the clean hands before this Court. On merits, it has been asserted that the petitioner had worked from 7.11.1997 till 5.7.2012 and not upto 14.7.2012. It is admitted that the company had issued sweat equity shares in favour of petitioner as a matter of policy but it is denied that his services had been terminated in violation of the mandatory provisions of the Act. In fact, the services of the petitioner had been terminated in view of grave misconduct as he was not performing his duties sincerely, obediently and even he was given warning for disobedience of orders of his superiors for which show cause notice dated 13.6.2012, was issued to him. Even, no resolution had been received by the respondent from the workers wherein the petitioner had been chosen one of the members of the union. It is further asserted that the services of the petitioner had rightly been terminated by the respondent in view of acts of gross indiscipline/misconduct on his part by giving proper opportunity of being heard to him. The petitioner was paid full and final payment of ` one lakh four thousand three hundred nine which includes three months' notice pay. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 25.10.2014.

13. Whether the termination of services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...OPP.
14. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
15. Whether this petition is not maintainable? ...OPR

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

### Reasons for findings

#### Issues no.1.

7. To prove this issue, the petitioner examined three PWs including himself. PW-1 Shri Prashant Sharma has stated that he had worked as senior engineer with the respondent company *w.e.f.* December, 2005 till June, 2012 and the petitioner was working as fitter under his supervision. The petitioner never misbehaved with anyone. The company had never issued any notice of termination to the petitioner through him and the petitioner used to get salary @ ₹ 10,000/- per month approximately. The petitioner never gave any demand notice to the company through him and one Gian Singh was working as a fitter during that period in the company. In cross-examination, he denied that Gian Singh was working as supervisor and that he had made a report mark X to the company regarding the misconduct of the petitioner. He further denied that the petitioner used to incite the other workers to go slow and also used to create the atmosphere of indiscipline in the company and for this reason his services had been terminated. He further denied that the company earlier also had issued notices dated 19.5.2012 and 13.6.2012 for his misconduct. He denied that the work and conduct of the petitioner was not good.

8. PW-2 Shri Baban Prasad has stated that he was working with the respondent company as fitter *w.e.f.* 2001 till Feb., 2014. The petitioner never misbehaved with anybody in the company and after the termination of the petitioner, the respondent had engaged many other workers. In the year, 2012, the workers of the company had submitted a demand charter to the company. In cross-examination, he denied that the conduct of the petitioner *w.e.f.* April, 2012 till July, 2012 with his superiors S/Shri Ashok Gupta and Gian Chand was not proper and that he used to incite the other co-workers to go slow and to indulge in strike. He further denied that Gian Singh had made a report mark X to the company regarding his misconduct and earlier also notices dated 19.5.2012 and 13.6.2012 had been issued to petitioner for his misconduct by the respondent.

9. Petitioner Shri Bharat Kumar himself had appeared in the witness box as PW-3 to depose that he joined the respondent company as fitter in the year, 1997 and worked as such till July, 2012 and in the year, 2006, *vide* mark A, the respondent company had issued sweat equity share of ₹ 2,974/- in his name. He never misbehaved with his superiors S/Shri Gian Singh and Ashok Gupta. The workers of the company had given a demand charter to the respondent on 25.2.2012 and *vide* resolution mark C, the workers of the company jointly selected six workers including him to have talks with the management. He further deposed that *vide* memorandum of settlement dated 30.10.2012, pursuant to the demand notice, a settlement was arrived at between the management and workers before the labour inspector. Before terminating his services, the company neither issued any notice to him nor conducted any enquiry and the notices mark Z and Z-1 were never issued to him. After his termination, he visited the company for his re-instatement

but of no avail and thereafter, he raised a demand notice and at the time of his termination his salary was ₹ 9800/- per month. In cross-examination, he denied that his behavior in the company w.e.f. April, 2012 till July, 2012 was not proper and he used to misbehave with his superiors and that he had created an atmosphere of indiscipline in the company and used to incite other workers against the management. He further denied that vide mark X, Shri Gian Singh and vide mark Y Shri Ashok Gupta had made complaint against him. He also denied that vide mark Z-1, the company had issued warning letter to him and he refused to accept the same when S/Shri Mankeshwar and Jai Kishore had come to give notice to him. He denied that show cause notice dated 13.6.2012 had been issued to him and he refused to accept the same. He further denied that he along-with other workers had never given any demand charter to the company. He also denied that after his termination he is working as fitter and earning more than ₹ 25,000/- per month.

10. On the contrary, the respondent examined six RWs. RW-1 Shri Rajbir Singh, Manager Legal, tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as narrated in the reply. He also tendered in evidence board resolution dated 22.1.2014 Ex. RW-1/B, report of supervisor Shri Gian Singh dated 15.5.2012 Ex. RW-1/C, report of section reader Shri Ashok Gupta Ex. RW-1/D, final warning memo dated 19.5.2012 Ex. RW-1/E, show cause notice dated 13.6.2012 Ex. RW-1/F, termination order dated 9.7.2012 mark RX-1, standing orders Ex. RW- 1/G and full and final settlement sheet Ex. RW-1/H. In cross-examination, he denied that the notice/warning letter to the petitioner had been issued by him. He further denied that the company had issued three month's advance notice to the petitioner. He expressed his ignorance that the company had appointed any other persons after the termination of the petitioner and that settlement dated 30.1.2012 had taken place between the workers and the company. He denied that the company had not followed the proper procedure for termination of the petitioner.

11. RW-2 Shri Mankeshwar, Fitter has also tendered his affidavit Ex. RW-2/A in evidence wherein he has stated that he was working as fitter with the respondent company and on 13.6.2012 he was present when the show cause notice dated 13.6.2012 was tried to be served upon the petitioner by HR representative Shri Jagdeep Rana but the petitioner refused to accept the same in his presence. In cross-examination, he denied that the petitioner never misbehaved with him. He admitted that the workers had given a demand charter dated 25.2.2012 to the respondent and that the same was also signed by him.

12. Shri Jai Kishore, Fitter appeared into the witness box as RW-3 and tendered in evidence his affidavit Ex. RW-3/A wherein he supported the entire version of RW-2 Shri Mankeshwar. In cross-examination, he denied that the petitioner never misbehaved with him. He admitted that the respondent had issued show cause notice mark Z to the petitioner but he refused to take the same and that he had signed on this notice as witness. He denied that there is no enmity between him and the petitioner.

13. RW-4 Shri Gyan Singh, supervisor tendered in evidence his affidavit Ex. RW- 4/A wherein he stated that he had the duty and responsibility to take the work from the petitioner and he (petitioner) used to report him and he used to pass necessary instructions to petitioner from time to time on behalf of the company. He further deposed that on 15.5.2012, he asked the petitioner to do the assigned and allotted work who refused to obey his instructions and then he reported the matter to his seniors vide report dated 15.5.2012. He also tendered in evidence report dated 15.5.2012 Ex. RW-4/A. in cross-examination, he denied that the petitioner was not working under his control and that he was not reporting to him. He admitted that he had given the instructions on behalf of the company. He denied that the petitioner had not misbehaved with him.

14. Shri Ashok Gupta, production incharge appeared into the witness box as RW-5 and tendered in evidence his affidavit Ex. RW-5/A wherein he stated that the behavior of petitioner

many times was not good and he used to misbehave with him, his colleagues and seniors and he also used to refuse to do the work assigned to him. On 15.5.2012, he was informed about the misbehavior and insubordination incidence of petitioner by Gian Singh vide report dated 15.5.2012 and thereafter he reported the matter to the HR department vide report dated 12.6.2012. He also tendered in evidence report dated 12.6.2012 Ex. RW-5/B, report dated 15.5.2012 Ex. RW-5/C and warning memo dated 19.5.2012 Ex. RW-5/D. In cross-examination, he admitted that the petitioner was working under his control. He denied that the petitioner had never misbehaved with him and had never refused to do the work and that he was not authorized to issue any warning letter to the petitioner.

15. RW-6 Shri Shiv Kumar, Officer (HR) had tendered in evidence his affidavit Ex. RW-6/A wherein he stated that the petitioner had worked with respondent for 14 years 8 months and 7 days up to 5.7.2012 and all dues have been paid to him vide cheque no. 580343 dated 18.7.2012. He also tendered in evidence the copy of order of Civil Judge (Sr. division), Nalagarh dated 31.1.2015 mark RX-2, copy of plaint filed before Senior Sub Judge, Nalagarh Mark RX-3 and copy of account statement mark RX-4. In cross-examination, he denied that full & final payment of legal dues has not been given to the petitioner. He admitted that Prashant Kumar and Baban Kumar were the employees of the company. He denied that demand charter dated 20.2.2012 mark B was given by the workers to the company.

16. The learned counsel for the petitioner contended that the services of the petitioner have been terminated illegally by the respondent without following the provisions of the Act and without serving any show cause notice, chargesheet and without holding any enquiry. He further contended that the termination of the petitioner in the aforesaid manner, in violation of the principles of natural justice, tantamount of unfair labour practice, as such, the petitioner is entitled to be reinstated in service.

17. Conversely, the learned counsel for the respondent contended that the services of the petitioner were rightly terminated in view of the gross/major misconduct on his part and there is no violation of any mandatory provisions of the Act.

18. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent from 7.11.1997 up to 14th July, 2012. It is the admitted case of the respondent that the petitioner served for a period of fourteen years, seven months and twenty eight days. It is also not in dispute that the petitioner was the permanent employee of the respondent prior to his termination. Though, the case of the respondent is that his services have been rightly terminated in view of the grave/major misconduct on his part. However, from the perusal of the record it has become clear that the services of the petitioner had been terminated vide order dated 9.7.2012, without holding any domestic enquiry and without issuance of any chargesheet as admitted by the respondent. Now, the question which arises for consideration before this Court as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioner without holding the domestic enquiry and without following the principles of natural justice on the ground of the misconduct. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is a proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. The case of the respondent is that the petitioner was paid full and final payment of ₹ 1,04,309/- which includes three months' pay due to be paid prior to his termination as per the standing orders. The respondent had placed on record the extract of the standing orders Ex. RW-1/G wherein it has been mentioned in clause 28 (a) that the services of any permanent workman may be terminated by the management by giving him one/three months'



notice or payment of one/three months in lieu of such notice etc. The relevant clause of the aforesaid standing orders is reproduced as under:

“28 (a) The services of any permanent workman may be terminated by the management by giving one/three months’ notice or payment of one/three months in lieu of such notice and two weeks’ notice in the case of other workman. One months or two weeks’ pay as the case may be may be paid in lieu of notice.”

The perusal of the aforesaid provision shows that the management can terminate the services of any permanent workman by giving one/three months’ notice or payment of one/ three months wages in lieu of such notice. However, the respondent had not placed on record the complete copy of certified standing orders for the reasons best known to it. The Ld. Counsel for the respondent has failed to explain as to why the respondent had withheld the complete copy of the certified standing orders. Even, if, the standing orders provide for the termination of the permanent workman by giving him one/three months’ notice or payment of one/three months wages in lieu of such notice, the same is against the principles of natural justice because as observed earlier, it is a settled legal proposition that a workman against whom misconduct is alleged cannot be dismissed from service unless he has been given reasonable opportunity of being heard and a proper domestic enquiry is held against him in respect of alleged misconduct. In the present case admittedly neither any chargesheet was issued to the petitioner nor any domestic enquiry was held before terminating him from service.

19. Further, the case of the respondent is that a show cause notice dated 13.6.2012 Ex. RW-1/F was served upon the petitioner but he had refused to accept the same in the presence of RW-2 Mankeshwar and RW-3 Jai Kishore. However, the case of the petitioner is that he was never issued any show cause notice. No independent witness has been examined by the respondent in order to prove that the show cause notice Ex. RW-1/F was refused to be accepted by the petitioner. Both RW-2 and RW-3 are the employees of the respondent company and they are highly interested witnesses, therefore, their testimony is not sufficient to prove that the petitioner had refused to accept the show cause notice. As per the affidavits of RW-2 and RW-3, the show cause notice Ex. RW-1/F was issued by the then HR Manager Ms. Pavneet Miglani and was tried to be served upon the petitioner by HR representative Mr. Jagjeet Rana. However, the respondents have failed to produce both the aforesaid persons in the witness box. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had refused to accept the show cause notice. Moreover, it remains a fact that neither any chargesheet was issued to the petitioner nor any domestic enquiry was held against him before terminating his services. In *D. K. Yadav Vs. M/s J.M A Industries Ltd.* as reported in 1993-1 Supreme Court Service Law Judgments-221, the Hon’ble Apex Court has held as under:

*“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”*

In a recent judgment of our Hon’ble High Court in ILR-XLV (VI) 938 titled as *Gurcharan Singh Deceased through his LR’s Vs. State of HP and ors.* the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon’ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9. ....

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
11. ....
12. ....
13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked continuously with the respondent from the 7.11.1997 till 14.7.2012 and he was the permanent employee. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioner prior to his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

20. There can be no dispute about the fact that the respondent is entitled to lead evidence on merits before this Court to prove the misconduct of the petitioner in case his dismissal is found to be in violation of the principles of natural justice. In (2006)-6 S.C.C 325, titled as Amritt Vanaspati Co. Ltd. Vs. Khem Chand and another, it has been held by the Hon'ble Apex Court that even if no enquiry has been held by the employer or the enquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and the employee to adduce evidence before it. Now, the next question which arises for consideration before this Court is as to whether the alleged misconduct has been proved by the respondent against the petitioner or not. The perusal of the record makes it clear that termination order dated 9.7.2012, mark RX-1 was issued by the respondent company terminating the services of the petitioner on the ground that he had disobeyed the instructions/orders of his superiors repeatedly and instigated the co-workers against the management which was against the policy of the factory. To prove the aforesaid misconduct the respondent examined RW-1 Shri Rajbir Singh, Manager Legal, RW-2 Mankeshwar, RW-3, Jai Kishore, RW-4, Gian Singh and RW-5 Ashok Gupta. On the other hand, the petitioner examined PW-1 Prashant Sharma and PW-2 Baban Prasad, who were the ex- employees of the respondent company and both of them have supported the cause of the petitioner by categorically stating that the petitioner never misbehaved with anyone. Rather, the case of the petitioner is that he never misbehaved with his superiors and since he had given a demand charter to the company along-with other five workers, the management had terminated his services. PW-3 also stated that the workers of the company had submitted a demand charter to the management which fact has also been admitted by RW-2 in cross-examination that the workers had given a demand charter to the respondent company. It is pertinent to mention here that except for the statements of RW-1 to RW- 6, who are the employees of the company no independent witness has been examined by the respondent company to prove that the petitioner had repeatedly disobeyed the orders of his superiors and instigated the co-workers against the management. In the reports Ex. RW-4/A and Ex. RW-5/B nothing has been mentioned about the fact that the petitioner had instigated the co-workers of the factory to slow down the production in order to cause loss to the company. Therefore, in view of the aforesaid back-ground, it cannot be said that the misconduct as alleged by respondent has been proved against the petitioner before this Court.

21. Therefore, in view of the fact that neither any domestic enquiry was conducted against the petitioner nor the misconduct has been proved before this Court by the respondent, it can safely be held that the termination of the services of the petitioner during July, 2012 by the respondent was illegal and unjustified.

22. Admittedly, the petitioner had completed more than 240 days in each calendar year, preceding his termination. Now, it stands proved on record that the services of the petitioner had been terminated without giving any opportunity of being heard to him. As per the termination letter dated 9.7.2012, the petitioner was directed to receive three month's salary w.e.f. 9.7.2012 to 8.10.2012, from the HR department of respondent company. However, the respondent has failed to comply with the conditions (b) and (c) of section 25-F of the Act before terminating the services of the petitioner. At this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under:

**25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (f) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

23. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied with the conditions of section 25-F as enumerated in clause (b) & (c), precedent to the retrenchment of petitioner. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'ble Apex Court has held as under:

“34. ....The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

24. In the present case also no evidence has been produced by the respondent to prove that the petitioner has been paid retrenchment compensation equivalent to the fifteen days' average pay

(for every completed year of continuous service) or any part thereof in excess of six months as per clause (b) of section 25-F. Further, with regard to the provisions of clause (c) of the section 25-F, the respondent has failed to produce any evidence which could go to show that the notice was served in the prescribed manner on the appropriate government. Therefore, it has become clear that the respondent has not complied with the conditions (b) & (c) of the section 25-F, which are mandatory in nature as such the termination of the services of the petitioner by the respondent was illegal and unjustified.

25. Therefore, in view of my forgoing discussion, I have no hesitation in holding that the services of the petitioner have been terminated illegally without conducting of any enquiry and following the provisions of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of the petitioner and against the respondent.

### **Issue no. 2.**

26. Since, I have held under issues no.1 above that the termination of services of the petitioner by the respondent without complying with the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

27. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

28. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

29. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

### **Issue no. 3.**

30. In support of this issue, no evidence has been led by the respondent which could go to show that this petition is not maintainable especially when the same was filed by the petitioner

pursuant to reference sent by the appropriate government to this Court for adjudication. Therefore, by holding it to be maintainable, this issue is decided in favour of the petitioner and against the respondent.

### **Relief.**

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back- wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of August, 2016. (Praveen)

(Sushil Kukreja),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.

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### **IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref. No. 3 of 2008.  
Instituted on. 30.1.2008  
Decided on 30.8.2016.

1. Jagar Singh 2. Des Raj 3. Sat Pal 4. Ved Prakash 5. Ramesh Chand 6. Joginer Singh 7. Ram Kumar 8. Kuldeep 9. Pritam Singh 10. Mukesh Kuamr 11. Deep Chand 12. Faqir Chand 13. Hukmi Ram 14. Bharat Singh 15. Sat Pal 16. Ramesh Chand 17. Kashmir Singh 18. Ram Swroop 19. Suresh Pal 20. Raghubir Singh 21. Lal Chand 22. Shamsher Singh 23. Surinder Kumar 24. Hem Chand 25. Raj Kumar, 26. Babu Ram 27. Satpal 28. Ram Kumar.
29. Prem Pal S/o Shri Jivan Singh R/o Village Bela, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
30. Bachna Ram S/o Shri Shankar Lal R/o Village Kandro P.O Birmam Bag, District Sirmour, HP.
31. Jalam Singh S/o Shri Fagu Ram R/o Village Pipalwala, Kamlesh Kumar P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
32. Yad Ram S/o Shri Tota Ram R/o Village Kharwala, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
33. Naresh Kumar S/o Shri Attar Singh R/o Village Kandro, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
34. Rafiq Mohd., S/o Shri Karamdeen R/o Village Sarkandawala, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.

35. Pritam Singh S/o Kundan Singh Village Bela, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
36. Kamlesh Kumar S/o Shri Munsu Ram Village & P.O Bermapapri, Tehsil Nahan, District Sirmour, HP.
37. Baldev Singh S/o Shri Bachan Singh Village Kandhariwala, P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
38. Sharban Kumar S/o Shri Bachana Ram R/o Village Bella P.O Bikaram Bag, Tehsil Nahan District Sirmour, HP.
39. Jai Singh S/o Shri Bambhool Singh R/o Village Pothia, P.O Trilokpur, Tehsil Nahan District Sirmour, HP.
40. Surender Singh S/o Shri Madho Singh R/o Village Kodhywala, P.O Haripur, Tehsil Paonta Shib, District Sirmour, HP.
41. Phool Singh S/o Shri Jeet Singh R/o Village Bela, P.O Bikram Bag, Tehsil Nahan, District Sirmour, HP. *...Petitioners.*

*Vs.*

1. Project Director Integrated Water Shed Development Project Solan, District Solan, HP.
2. Assistant Project Officer, IWDP (Kandi) Nahan District Sirmour, HP.
3. Range Officer Kandi Project Nahan District Sirmour, HP. *...Respondents.*

**Reference under Section 10 of the Industrial Disputes Act, 1947.**

For petitioners no. 1 to 28 : Shri Niranjana Verma, Advocate.

For petitioners no. 29 to 41 : Shri Sandeep Dutta, Advocate.

For respondents : Shri Vikrant Thakur, Advocate.

**AWARD**

The following reference has been sent by the appropriate government for adjudication:

**“Whether the termination of services of Shri Phool Singh S/o Shri Jeet Singh and 58 others workmen (list enclosed) by the Assistant Director (project) Akikrit Jal Vikas Pariyojna, Nahan (Kandi), District Sirmour, HP w.e.f. 1.10.2005 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman are entitled to?”**

2. Before, I proceed further, it is important to mention here that the aforesaid reference has been received on behalf of 58 workmen but before this Court claim has been filed on behalf of only 41 workmen whereas the other remaining workmen failed to file any claim and to appear

before this Court. For the failure of the remaining workers to appear before this Court in order to file any statement of claim and to lead evidence, the reference, as aforesaid, is answered against them.

3. Petitioners no. 1 to 28, as above, have filed a joint statement of claim alleging therein that they had been working as workers since June, 1990 with the respondent integrated IWP (Kandi), Nahan and completed more than 16 years of continuous uninterrupted service with the respondent and also completed 240 days in each calendar year and as such the petitioners (no. 1 to 28) covered within the meaning of section 25-B (2) a (ii) of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that despite several representations oral as well as in writing, the services of the petitioners have not been regularized. The respondents are presently working with the same administration with the new project under the name of Madhya Himalya Jalagam Vikas Yojna and the employees of the earlier Kandi Project were also re-engaged by the respondents w.e.f. the year, 2006 and the services of two employees of Kandi Project namely S/Shri Devinder Singh and Liaquat Ali have been regularized by the respondent in new project and two more employees from the Una unit namely S/Shri Yog Raj and Ram Krishan have also been regularized and one employee Shri Jagat Singh Negi who was working at the post of HDO Kandi Project has been regularized in the year, 2006. It is also stated that from the year, 2002, the casual cards were duly issued to the employees from the unit of respondents which includes the present petitioners. The services of the petitioners no. 1 to 28, have been illegally terminated by the respondents despite the fact that they have served with the respondents for more than 10-15 years. By filing separate statement of claims petitioners no. 29 to 41 supported all the contents as stated by petitioners no. 1 to 29 in their claim including that they had been engaged as workers by the respondents in the month of June, 1992. Against this back-drop, a common prayer has been made that the forest department be directed to regularize the services of the petitioners with all other consequential benefits including amount of ` 50,000/- as compensation.

4. By filing joint/common reply, the respondents had contested the claim of the petitioners wherein preliminary objections had been taken that the petitioners have not approached this Court with clean hands, the petitioners were engaged on daily wages basis from 2001 to 2005 in Kandi Project, Nahan and this was special project launched in the State of H.P with special funds provided by the World Bank, where they worked till September, 2005, that the work on which the petitioners were engaged was being carried out under the funds of the world Bank and the project has come to close due to the specific work has been over and now all daily waged workers including the petitioners were dis-engaged and as such no vested right is created in the temporary employment, that the claim is barred by limitation and that the petition is bad for non-joinder of necessary parties. On merits, it has been denied that the petitioners are covered within the meaning of the section 25-B (2) of the Act as the petitioners were engaged to fulfill the stop gap arrangement and since the project is over, hence, the petitioners cannot claim any vested right in absence of the policy framed by the department. It is asserted that all the petitioners were appointed for Kandi Project which was for specific period only and was aided with the funds of World Bank and after the completion of the project, regularization of the services of the petitioners does not arise. It is further asserted that the retrenched workmen of the closed IWP Project were offered engagement on similar terms and conditions in new watershed Development project in Mid Himalyan Region funded by the World Bank and some of the workmen got engaged in the new project whereas some did not join their duties in the above said project in which the respondents tried to adjust maximum workers who were disengaged at the completion of Kandi Project. The respondents prayed for the dismissal of the claim petitions.

5. Rejoinders not filed. Pleadings of the parties gave rise to the following issues which were struck on 14.7.2010.

16. Whether the termination of the services of the petitioners w.e.f. 1.10.2005 is illegal and unjustified for being in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? ...*OPP*.
17. If issue no.1 is proved to what service benefits the petitioners are entitled to? ...*OPR*.
18. Whether the claim of the petitioners are not maintainable? ...*OPR*.
19. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Reference answered in favour of the respondents and against the petitioners per operative part of award.

### **Reasons for findings**

#### **Issues no. 1.**

8. Learned Counsels for the petitioners contended that the services of the petitioners had been terminated illegally by the respondents without complying with the mandatory provisions of the Act despite the fact that all the petitioners have been engaged as daily wagers in the Kandi Project and they had worked continuously as such till 2005 and also completed 240 days in each calendar year but their services had been terminated without serving prior notice under section 25-F of the Act. They further contended that the services of some of the workers have also been regularized by ignoring the petitioners.

9. On the other hand, learned counsel for respondents contended that since the services of the petitioner were engaged for specific period under Kandi Project and their services came to an end on the completion of the project, hence, there is no need to comply with the provisions of the Act. He further contended that no person has been regularized by the project authorities.

10. To prove their case, the petitioners have examined five PWs. PW-1 Shri Baldev Singh, President Kandi Mazdoor Union has stated, on oath, that they were employed as workers in Kandi Project in the year, 1990 and worked as such without any interruption till the year, 2005 and they worked on muster roll issued by the forest department. Some of the workers were employed during the period from 1990 to 2005 and total number of workers at the time of winding up of the project were eighty and the workers were working for 365 days continuously in a calendar year without any break. After winding up of the Project, the work of Mid Himalyan Project started which was also under the control of forest department and their services were engaged in Mid Himalyan Project and the work of this project is still going on. The services of some workers namely S/o Shri



Devinder, Liaqt Ali, Yog Raj, Ram Kishan and Jagat Singh Negi were regularized by the department. On demand by them, casual cards were issued by the project authorities and the purchase of projects were being made against Dfarma @ 4% tax as per norms applicable to the government of HP. Shri Jagat Singh Negi was also working in Kandi Project and by way of verbal order, he was asked to join Mid Himalyan Project and out of eighty workers 49 workers have not been reinstated in Mid Himalyan Project. In cross-examination, he admitted that the Kandi Project stood wound up in the year, 2005. He denied that they were appraised at the time of appointment that their appointment was for a fixed period and thereafter their services were to be dispensed with. He further denied that they were kept till the availability of work. He also denied that they are not entitled to any benefits.

11. PW-2 Shri Ram Kumar tendered his affidavit in examination-in-chief wherein he has supported almost all the contents as stated by PW-1 including that he along-with other workers/petitioners were engaged in the Kandi Project now under the name of Madhya Himalya Jalagam Vikas Pariyojna since, 1990 and thereafter. He was authorized by the workers of Kandi Project/ Mid Himalya Project to depose on their behalf. All the workers have completed 12-20 years with the respondent. He also tendered in evidence document Ex. PW-2/A. In cross-examination, he admitted that they are having union affiliated to CITU and that Ex. PW-2/A is not on the letter head of the union. He admitted that the Kandi Project stood wound up in the year, 2005. He denied that they were appraised at the time of appointment that their appointment was for a fixed period and thereafter their services were to be dispensed with. He further denied that they were kept till the availability of work. He also denied that they are not entitled to any benefits.

12. PW-3 Shri Jaswant Saini, Superintendent Grade-II in the office of Divisional Water Shed Project, Nahan has stated that the petitioners were working from 1990 with Kandi Project and the detail of year-wise mandays of the workers working in Kandi Project are Ex. PW-3/A and Ex. PW-3/B. Identity cards were issued to the petitioners by the authorities of kandi project. In cross-examination, he admitted that as per Ex. PW-3/A and Ex. PW-3/B, some persons have not completed 240 days in a calendar year and that after the closure of the Kandi Project, petitioners were offered to join Mid Himalyan Project.

13. Shri Munshi Ram, DRDO, Kandi Project has appered in to the witness box as PW-4 to depose that Shi Vinay Kumar had worked in Kandi Project w.e.f. 13.12.1990 till 30.9.2005 and his mandays chart is Ex. PW-4/A. As per record, the services of Shri Vinay Kumar were regularized. PW-5, Shri Moti Ram Sr. Assistant has deposed that S/Shri Jagat Singh Negi and Vinay Kumar Bhardwaj had been working in Kandi Project w.e.f 1992 to 2006 and thereafter the services of both the aforesaid persons have been regularized in the Horticulture Department as per Ex. PW-5/A. In cross-examination, he expressed his ignorance that from where the seniority of Jagat Singh Negi and Vinay Kumar had been taken by the Horticulture Department.

14. On the contrary, the respondents examined two RWs. RW-1 Shri Sukhdarshan Singh, Sr. Assistant has stated that the petitioners were working in Kandi Project on daily wages basis and the said project came to an end on 30.9.2005. At the time of their engagements, the petitioners were told that they were engaged till the completion of project. The mandays chart of the petitioners is Ex. PW-3/A. They had not regularized any worker in project and Shri Devinder Singh is working in the office of DFO Nahan as Junior Assistant and about Shri Liat Ali he had no knowledge. Shri Jagat Singh Negi is working with Horticulture Department. In cross-examination, he admitted that as per Ex. PW-3/A, the petitioners have completed 240 days in each calendar year. He further admitted that S/Shri Devinder singh, Liat Ali, Yog Raj, Ram Krishan, jagat Singh Negi and Vinay Kumar Bhardwaj had also been working in Kandi Project in the State of HP and as per record Shri Devinder Singh, Liat Ali, Vinay Kumar Bhardwaj and Jagat Singh Negi, who were

working with the petitioners in their project have been regularized. He also admitted that all these petitioners were also entitled for regularization.

15. RW-2 Shri S.R Rana, DWD Officer has stated that the petitioners were working as daily wager with Kandi Hill Project as per Ex. PW-3/A and none of the daily waged workers were regularized in Divisional Water Shed Office, Nahan. In cross-examination, he admitted that S/Shri Devinder Singh, Liqueat Ali, Yog Raj, Ram Krishan, Jagat Singh Negi and Vinay Kumar Bhardwaj were also working with Kandi Hill Project. He further admitted that forest department was nodal department of Kandi Project and the same was working under the government of Himachal Pradesh along-with other departments. He also admitted that the insurance of all the daily paid workers were done as per the letter of government Ex. RX.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioners have been engaged in the erstwhile Integrated Water Shed Development Project, Kandi, w.e.f. the year, 1990 to September, 2005. It is also not disputed that the project was closed in the year, 2005. Both PW-1 and PW-2, have admitted in cross-examination that the Kandi Project stood wound up in the year, 2005. RW-1 deposed that the project was closed on 30.9.2005. The case of the respondents is that the appointment of the petitioners was on contract basis and on the completion of project, their services came to an end. It was for the petitioners to prove that they were the regular daily wagers with the respondents and their services were terminated illegally. However, except for the bald statements of PW-1 and PW-2, no cogent and satisfactory evidence has been led by the petitioners to prove that their services were illegally terminated. Rather, It has been admitted by both PW-1 and PW-2 that no appointment letter was issued to them which shows that their appointment was purely casual and on temporary basis and the same was not made by following a due process of selection. Since, on the completion of the project their services came to an end, now it does not lie in the mouth of the petitioners to claim their re- engagement on the basis of their previous work with the respondents. Even if it is proved on record that some of the petitioners had completed 240 working days in a calendar year preceding their termination even then they are not entitled to be reengaged in service by giving them the protection under section 25-F of the Industrial Disputes Act, 1947 as it is now well settled principle of law that the engagement made for specific period comes to an end by efflux of time and the person on such post can have no right to continue on the post and it does not matter even if he had worked for more than 240 working days in any 12 calendar months preceding his termination. It has been held by the Hon'ble Supreme Court in (2006) 6 SCC 221 incase titled as Reserve Bank Of India Vs. Gopi Nath Sharma & Another that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post. The relevant portion of the aforesaid judgment is reproduced as under:

“22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary.....”

Apart from it, it was further held in 2006 LLR 68 SC titled as Punjab State Electricity Board V. Darbara Singh and in 2006 LLR 1009 SC. titled as Municipal Council Samrala V. Surhwinder Kaur that when material on record established that engagement of workman was for specific period as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.

In the instant case, the petitioners were engaged for specific period under the IWDP and on the completion of the project their services came to an end automatically. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be

concluded that the termination of the petitioners who had been engaged for specific period for specific project does not amount to retrenchment and the project having come to an end, the petitioners now cannot be reinstated in service.

17. Though, the case of the petitioners is that the services of some workers namely Devinder Kumar, Liaquat Ali, Yog Raj, Ram Krishan and Jagat Singh Negi who were working in the Project, have been regularized by the Project authorities. However, no evidence has been produced by the petitioners which could go to show that the services of aforesaid workers were regularized by the project authorities. RW-1, deposed that no person working in Project was regularized by the project authorities. He further deposed that Shri Devinder Kumar was working as Junior Assistant in the office of DFO Nahan and Jagat Singh Negi was working in the Horticulture department. PW-5 deposed that Jagat Singh Negi and Vinay Kumar Bhardwaj who were working in the Kandi Project were regularized by the Horticulture Department vide notification Ex. PW-5/A. Therefore, the evidence on record shows that the aforesaid persons have been regularized in some other departments and the same does not confer any right in favour of the petitioners and it cannot be said that they had been discriminated against in the matter of regularization. No other evidence has been led by the petitioners in this respect. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the services of some of the workers who were working in Kandi Project, have been regularized by the project authorities by ignoring the petitioners. The petitioners have also failed to place on record any policy of the State Government regarding the regularization of the workers working in the Kandi Project. Therefore, in the absence of any policy by the State Government, no directions can be issued for the regularization of the services of the petitioners. Furthermore, it has been observed by the Hon'ble Apex Court in a catena of judgments that even if a person is continued in employment for a long time, it does not give him any right to ask for regularization on the basis of his long employment as he does not have any right to the post. In AIR 1997 S.C 352, State of Himachal Pradesh through the Secretary, Rural Development to the Government of Himachal Pradesh, Shimla Vs. Ashwani Kumar and others it has been held by the Hon'ble Apex Court that the termination on closure of project is proper as no vested right is created in temporary employment. The relevant portion of the aforesaid judgment is reproduced as under:

“4. It is seen that when the project is completed and closed due to non-availability of funds, consequently, the employees have to go along with the closed project. The High Court was not right in giving the direction to regularize them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularize their services in the absence of any existing vacancies nor directions be given to create posts by the State to a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them in spite of non-availability of the work. We are of considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is set side”.

In AIR 2006 SC 1806 Secretary, State of Karnatka & Ors. Vs. Uma Devi & Ors., it has been held by the Hon'ble Apex Court that appointment dehors due process of selection envisaged by constitutional scheme, confers no right on appointee. The relevant portion of the aforesaid judgment is reproduced as under:

“Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a

contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right”.

In the present case also as observed earlier, the petitioners have been engaged for specific project and on the completion of the project, their services came to an end, hence, they are not entitled to be regularized as they have no right to the post. The petitioners have no legal right to be regularized as their appointment was co-terminus with the project.

18. Hence, in view of the law laid down by the Hon’ble Apex Court (supra), the petitioners have no right for regularization nor their termination can be said to be illegal and unjustified in any manner. Accordingly this issue is decided in favour of respondents and against the petitioners.

#### **Issue no. 2**

19. Since, the petitioners have failed to prove issue no.1 above, this issue becomes redundant.

#### **Issue no. 3.**

20. In support of this issue, no evidence has been led by the respondents. However, the petitioners have filed their claim petitions pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with these petitions which are perfectly maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

#### **Relief.**

As a sequel to my above discussion and findings on issues no.1 to 3, the claims of the petitioners fail and are hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioners. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of August, 2016. (Praveen)

**(Sushil Kukreja),**  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

## नगर निगम शिमला

## अधिसूचना

दिनांक: 29 सितम्बर, 2016

**ननिषि/सदन सहा0/940/सरकार/2016-3915.**—हिमाचल प्रदेश नगर निगम अधिनियम, 1994 (1994 का 12) की धारा 35 और धारा 36 की उप धारा (3) के साथ पठित धारा 395 के खण्ड (6) के भाग 1 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए नगर निगम शिमला द्वारा बनाई गई उप विधियां जैसे कि उक्त अधिनियम की धारा 397(1) के अधीन अपेक्षित हैं, एतद् द्वारा प्रकाशित की जाती हैं और ये उप विधियां शिमला नगर निगम की सीमाओं के भीतर, राजपत्र हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगी, अर्थात:—

1. **संक्षिप्त नाम.**—इन उप विधियों का संक्षिप्त नाम शिमला नगर निगम महापौर, उप-महापौर और पार्षदों के लिए सुविधाएँ (संशोधन) उप-विधियां 2016.

2. **उप-विधियां 3 में संशोधन.**—उप-विधि 3 में महापौर और उप-महापौर क्रमशः राशि रू0 “6500” और “4500” के स्थान पर “8000” और “6000” प्रतिमाह की दर से मानदेय प्राप्त करने के हकदार होंगे।

3. **उप-विधियां 9 में संशोधन.**—उप-विधि 9 में प्रत्येक पार्षद निगम की किसी बैठक या बैठकों में उपस्थित होने पर राशि रू0 “3000” के स्थान पर “4000” प्रतिमाह की दर से मानदेय प्राप्त करने के हकदार होंगे।

आदेश द्वारा,  
हस्ताक्षरित/—  
आयुक्त, नगर निगम शिमला।

## MUNICIPAL CORPORATION SHIMLA

## NOTIFICATION

*Dated: 29<sup>th</sup> September, 2016*

**No. MCS/MA/940/Govt./16-3914.**—The following amendment in the Shimla Municipal Corporation (Facilities to Mayor, Deputy Mayor and Councilors) Bye-Laws, 1996 made by the Municipal Corporation, Shimla in exercise of the powers conferred by sub clause (6) of clause (I) of Section 395, read with Section 35 and sub-Section (3) of Section 36 of the Himachal Pradesh Municipal Corporation Act, 1994 (Act No. 12 of 1994) are hereby published for general information as required under Section 397 of the said Act and shall come into force within the area of Municipal Corporation Shimla from the date of publication of this notification in the Rajpatra (extra ordinary) Himachal Pradesh, namely:—

1. **Short title.**—These Bye-Laws may be called the Shimla Municipal Corporation (Facilities to Mayor, Deputy Mayor and Councilors) (Amendment) Bye-Laws, 2016.

2. **Amendment of Bye-Laws 3.**—In Bye-Laws 3 for the figure “ 6500” and “4500” the figure “8000” and “6000” shall respectively be substituted.

**3. Amendment of Bye-Laws 9.**—In Bye-Laws 9 for the figure “3000” the figure “4000” shall be substituted.

By order,  
Sd/-

*Commissioner, Municipal Corporation, Shimla.*

## TRANSPORT DEPARTMENT

### NOTIFICATION

*Shimla-2 the 28th September, 2016*

**No-TPT-Kha(2)-3/96-I.**—The Governor, Himachal Pradesh is pleased to order the promotion of Sh. Kamal Jeet Sharma, Superintendent Grade-II of Transport Department, Himachal Pradesh to the post of Superintendent Grade-I (Class-I Gazetted ) in the pay band of Rs. 15600-39100+Rs.5400 Grade Pay, on regular basis with immediate effect in public interest.

2. The above officer will remain on probation for a period of 2 years from the date of issue of his promotion orders. He will exercise option under FR- 22 for fixation of pay within a period of one month from the date of issue of these orders.

3. The Governor, Himachal Pradesh, is further pleased to post him at Directorate of Transport against vacant post of Supdt. Gr-I with immediate effect.

By order,

**NARENDER CHAUHAN**

*Additional Chief Secretary (Transport).*

## LAW DEPARTMENT

### NOTICE

*Shimla-2, the 30<sup>th</sup> September, 2016*

**No. LLR-E(9)-2/2016-Leg.**—Whereas, the following Advocates of Districts Shimla and Mandi, H.P. have applied for appointment of Public Notary in the places mentioned against their names of their respective Districts under rule 4 of the Notaries Rules, 1956:—

Sr. No.	Name of Advocate	Area for which they have applied for appointment of Notary
1.	Sh. Yadvender, Advocate S/o Shri Charan Dass, R/o Charan Dass Building, Village & P.O. Soghi, Tehsil & District Shimla, H.P.- PIN-171219.	Sub-Division Shimla (Urban)

Sr. No.	Name of Advocate	Area for which they have applied for appointment of Notary
2.	Sh. Dinender Singh Panwar, Advocate S/o Sh. Amar Singh Panwar, R/o Panwar Niwas, Village Shanan, P.O. Sanjauli, Tehsil & District Shimla, H.P. Pin-171006.	Sub-Division Shimla (Urban)
3.	Sh. Ramesh Kumar, Advocate S/o Sh. Puran Chand, R/o Village Bah, P.O. Gagat, Tehsil Balh, District Mandi, H.P. Pin- 175006	Sub-Division Mandi

Therefore, I undersigned in exercise of the power conferred vide Government Notification No. LLR-A (2)-1/2014-Leg. dated 7th November, 2014, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of fifteen days from the date of publication of this notice in Rajpatra, H.P. against their appointment as Notary Public in the places mentioned against their names of their respective Districts.

(Competent Authority),  
DLR-cum-Deputy Secretary (Law-Legislation).

## HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

### NOTIFICATION

*Dated: 27<sup>th</sup> September, 2016*

**No.HHC/Admn.3(409)/95-I.**—56 days commuted leave on and with effect from 14.07.2016 to 07.09.2016, is hereby sanctioned, ex-post-facto, in favour of Shri Padam Dev Sharma, Court Master of this Registry.

Certified that Shri Padam Dev Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Padam Dev Sharma would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,  
Sd/-  
Registrar General.

**Before Shri Keshav Ram, Executive Magistrate (Tehsildar), Kasauli,  
District Solan, H. P.**

Case No. : 37/ 2016

Date of Institution : 06-09-2016

Date of Decision/  
Pending for : 10-10-2016

Shri Rangi Ram son of Shri Kirpa Ram, resident of Village Jadla, P.O. Kakarhatti, Tehsil Kasauli, District Solan, H. P. . . *Applicant.*

*Versus*

General Public

. . *Respondents.*

**Proclamation**

*Application under section 13(3) of the Birth and Death Registration Act, 1969.*

Shri Rangi Ram son of Shri Kirpa Ram, resident of Village Jadla, P.O. Kakarhatti, Tehsil Kasauli, District Solan, H. P. has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavits and other documents stating therein that Shri Ratti Ram *alias* Rattiya s/o Shri Uttam *alias* Fulmu was died on 02-12-1974 at Village Jadla, P.O. Kakarhatti, Tehsil Kasauli, District Solan, H. P., but his death could not be entered in the record of Gram Panchayat Jadla, Tehsil Kasauli, District Solan, H.P. by the applicant.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of delayed date of death of Shri Ratti Ram *alias* Rattiya s/o Shri Uttam *alias* Fulmu Singh, may submit their objections in writing in this court on or before 10-10-2016 at 10-00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 6<sup>th</sup> day of September, 2016.

Seal.

KESHAV RAM,  
*Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.*

**Before Shri Keshav Ram, Executive Magistrate (Tehsildar), Kasauli,  
District Solan, H. P.**

Case No. : .../2016

Date of Institution : 03-09-2016

Date of Decision/  
Pending for : 03-10-2016

Shri Gokul Atwal s/o Shri Sudarshan Kumar, resident of Nalwa, Tehsil Kasauli and Smt. Nitish d/o Shri Kuldeep Kagra w/o Gokul, resident of Village Nalwa, P.O. Kasauli, Tehsil Kasauli, District Solan, H. P. . . *Applicants.*

*Versus*



General Public

. . Respondents.

*Application under section 8(4) of H.P. Registration of Marriages Act, 1996.***Proclamation**

Shri Gokul s/o Shri Sudarshan Kumar, resident of Village Nalwa, Tehsil Kasauli and Smt. Nitish d/o Shri Kuldeep Kagra, w/o Gokul, resident of Village Nalwa, P.O. Kasauli, Tehsil Kasauli, Solan, H. P. have moved a joint application before the undersigned under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith affidavits and other documents stating therein that their marriage was solemnized on 25-03-2016 as per Hindu rites but their marriage could not be entered in the record of Gram Panchayat Kasauli Garkhal, Tehsil Kasauli within stipulated period. Hence they have prayed for passing necessary orders to the Registrar of Marriages-cum-Secretary, Gram Panchayat Kasauli Garkhal, Tehsil Kasauli for entering the same in the marriage records.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for the registration of delayed registration of marriage of applicants may submit their objections in writing in this court on or before 03-10-2016 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 2<sup>nd</sup> day of September, 2016.

Seal.

KESHAV RAM,  
Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.

**Before Shri Keshav Ram, Executive Magistrate (Tehsildar), Kasauli,  
District Solan, H. P.**

Case No. : 35/2016

Date of Institution : 03-09-2016

Date of Decision/

Pending for : 03-10-2016

Shri Vishal son of Shri Desh Raj, resident of Village Lawrence School, Sanawar, P.O. Sanawar, Tehsil Kasauli and Smt. Anjana Kumari w/o Shri Vishal daughter of Shri Kishan Pal, resident of Village Lawrence School, Sanawar, P.O. Sanawar, Tehsil Kasauli, District Solan, H. P.  
. . Applicants.

*Versus*

General Public

. . Respondents.

*Application under section 8(4) of H.P. Registration of Marriages Act, 1996.***Proclamation**

Shri Vishal son of Shri Desh Raj, resident of Village Lawrence School, Sanawar, P.O. Sanawar, Tehsil Kasauli and Smt. Anjana Kumari w/o Shri Vishal daughter of Shri Kishan Pal, resident of Village Lawrence School, Sanawar, P.O. Sanawar, Tehsil Kasauli, Solan, H. P. have moved a joint application before the undersigned under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith affidavits and other documents stating therein that their marriage was solemnized on 09-02-2011 as per Hindu rites but their marriage could not be entered in the record of Gram Panchayat Garkhal, Tehsil Kasauli within stipulated period. Hence they have prayed for passing necessary orders to the Registrar of Marriages-cum-Secretary, Gram Panchayat Garkhal, Tehsil Kasauli for entering the same in the marriage records.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for the registration of delayed registration of marriage of applicants may submit their objections in writing in this court on or before 03-10-2016 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 2<sup>nd</sup> day of September, 2016.

Seal.

KESHAV RAM,  
*Executive Magistrate (Tehsildar),  
Kasauli,, District Solan, H. P.*

**In the Court of Shri Keshav Ram, Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.**

Case No. : 39/ 2016

Date of Institution : 02-09-2016

Date of Decision/  
Pending for : 03-10-2016

Neha Bhandari d/o Shri Shashinder Bhandari, resident of Village Nayanagar, P. O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P. . . Applicant.

*Versus*

General Public

*Application U/S 13(3) of the Birth and Death Registration Act, 1969.*

### **Proclamation**

Shri Shashinder Bhandari, resident of Village Nayanagar, P. O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P. has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his daughter namely Neha Bhandari was born on 18-11-1990 at Village Nayanagar, P.O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P., but her birth could not be registered in the birth records of Gram Panchayat Jadla, Tehsil Kasauli within stipulated period. He prayed for passing necessary orders to the Secretary, G.P. Jadla, Tehsil Kasauli for entering the same.

Therefore, by this proclamation the General Public is hereby informed that any person having any objection regarding registering the birth of Neha Bhandari daughter of Shri Shashinder Bhandari may file their objections in this court on or before 03-10-2016, failing which no objection shall be entertained.

Given under my hand and seal on this 2<sup>nd</sup> day of September, 2016.

Seal.

KESHAV RAM,  
*Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.*

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**In the Court of Shri Keshav Ram, Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.**

Case No. : 36/ 2016

Date of Institution : 02-09-2016

Date of Decision/  
Pending for : 03-10-2016

Diksha Bhandari d/o Shri Shashinder Bhandari, resident of Village Nayanagar, P.O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P. . . Applicant.

*Versus*

General Public

*Application U/s 13(3) of the Birth and Death Registration Act, 1969.*

**Proclamation**

Shri Shashinder Bhandari, resident of Village Nayanagar, P. O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P. has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his daughter namely Diksha Bhandari was born on 22-12-1993 at Village Nayanagar, P.O. Subathu, Sub-Tehsil Krishangarh, Tehsil Kasauli, District Solan, H. P., but her birth could not be registered in the birth records of Gram Panchayat Jadla, Tehsil Kasauli within stipulated period. He prayed for passing necessary orders to the Secretary, G.P. Jadla, Tehsil Kasauli for entering the same.

Therefore, by this proclamation the General Public is hereby informed that any person having any objection regarding registering the birth of Diksha Bhandari daughter of Shri Shashinder Bhandari may file their objections in this court on or before 03-10-2016, failing which no objection shall be entertained.

Given under my hand and seal on this 2<sup>nd</sup> day of September, 2016.

Seal.

KESHAV RAM,  
*Executive Magistrate (Tehsildar),  
Kasauli, District Solan, H. P.*

### सूचना

मैं, श्रीमती कमला देवी पत्नी स्व० श्री बाबू राम, गांव व डा० रैहन, जिला कांगड़ा (हि० प्र०) घोषणा करती हूं कि मेरा नाम मेरे पति के सैन्य कागजात में गलती से शकुंतला देवी प्रकाशित है जो कि गलत है। मेरा असली नाम पंचायत रिकार्ड के मुताबिक श्रीमती कमला देवी पत्नी स्व० श्री बाबू राम दर्ज है। अतः मेरे पति के सैन्य कागजात में मेरा नाम श्रीमती कमला देवी दर्ज किया जाए।

कमला देवी,  
पत्नी स्व० श्री बाबू राम,  
गांव व डा० रैहन, जिला कांगड़ा (हि० प्र०)।